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Egg in your bier?

JAMES W. VAUPEL & JOHN D. GRAHAM

A determined assault by a remarkable alliance of physicians, journalists, government officials, and processed-food marketers has recast the once valued egg in the role of cardiovascular villain. By now advice such as that in the booklet *Four Keys to a Healthy Heart* is quite familiar: "Limit yourself to up to two eggs a week, if that, for egg yolk is particularly high in cholesterol. When baking, try to use only the egg white or an egg substitute." Written by Jeremiah Stamler, M.D., the distinguished chairman of the Department of Community Health and Preventive Medicine at Northwestern University Medical School, and Alton Blakeslee, the award-winning science editor of the Associated Press, the booklet "was brought to you" by Best Foods, a division of CPC International Inc., "makers of Mazola corn oil and Mazola margarine." The booklet's cover quotes H.E.W.'s then Assistant Secretary for Health Theodore Cooper's description of *Four Keys* as "health education at its best."

Over the past 10 or 15 years the public has been bombarded with a cannonade of such warnings about eggs, fired off by such awesome batteries as the Senate Select Committee on Nutrition and Human Needs, the American Heart Association, and the Inter-Society Commission on Heart Disease. Surely most of us either have cut back on egg consumption or have felt a twinge of conscience and a

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thrill of derring-do when we risk an omelet. But just how harmful are eggs? How many minutes or hours or days will a soufflé snuff out of your life? On a list of health and safety hazards, do eggs rank with cigarettes, with lawn mowers, with Miami drinking water, with bacon, or with peanut butter?

No one knows for sure. What is more surprising is that no one has attempted to make some reasoned guesstimates based on a synthesis of best available evidence. Volume after volume of Congressional testimony and shelf after shelf of clinical and epidemiological research ignore the quintessential question of the *magnitude* of the link between eggs and death.

Weighing the evidence on eggs is more than justified by the significant role they play in our diet—and by the nutritional recommendations with which we are admonished. In addition, the calculations for eggs serve as a model for the array of similar calculations that should be done for other health and safety hazards. The assault on eggs also constitutes an intriguing case study of the flustered hypochondria afflicting our health and safety policy in areas as diverse as saccharine, swimming-pool slides, PCB's, the approval of new pharmaceuticals, and nuclear-power regulation.[1]

The indictment

Eggs are indicted for containing cholesterol, a glistening, white, soapy, crystalline, fat-soluble and fat-like solid alcohol, $C_{27}H_{45}OH$, found in the fatty tissues of all animals and especially in bile, gallstones, brains, blood cells, blood and lymph plasma . . . and egg yolks. Each egg yolk contains about 250 milligrams of cholesterol. The five eggs the average American consumes per week thus account for a third of the average cholesterol intake of 600 milligrams per day; most of the rest of the cholesterol comes from meat, milk, and cheese.

In 1964 the American Heart Association recommended that the general public reduce cholesterol intake to 300 milligrams per day. An impressive array of expert committees in a variety of countries have since seconded that recommendation, and the majority of knowledgeable physicians, nutritionists, and biomedical researchers now back the assault on cholesterol. For example, in a worldwide

[1] The following analysis omits documentation of sources and details of calculations. For a fuller description, see our *The Impact of Egg Consumption on Coronary Heart Disease: A Policy Perspective*, available from the Publications Office, Institute of Policy Sciences and Public Affairs, 4875 Duke Station, Durham, North Carolina 27706.

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survey taken in 1976, the consensus of over 200 prominent scientists active in nutritional research was that reduced cholesterol consumption ranked third (after "less total calories" and "less saturated fat") as a dietary priority in reducing coronary heart disease.

Because a single egg nearly exhausts the recommended daily allowance of cholesterol, and because egg consumption is relatively easy to monitor and control, eggs are frequently singled out for restriction in dietary recommendations. The Inter-Society Commission on Heart Diseases, for instance, urged that "the public . . . be encouraged to avoid egg consumption, and the industry . . . be persuaded to minimize the egg-yolk content of commercially prepared foods." The usual advice is to cut egg consumption to two or three per week. If followed, this recommendation would halve egg consumption in the United States. That is a major change in the American diet, but if eggs are indeed an important cause of coronary heart disease, then the change could have significant impact on more than just the egg industry. Currently over 600,000 people die every year from coronary heart disease, accounting for one-third of all deaths. Roughly 150,000 of these heart-attack victims are under age 65, and they represent about one-quarter of all deaths before that age. Reducing these grim statistics by merely 1 or 2 percent would save thousands of lives per year.

Furthermore, a drastic reduction in egg consumption may indeed be feasible. A 1975 Gallup poll revealed that the word on eggs was widespread: One respondent in two believed that a person with heart disease should limit egg consumption, and two respondents in five believed that eating eggs regularly increases the chances of getting heart disease. Perhaps as a result of the steady stream of adverse publicity, average egg consumption in the United States is dropping: In 1960 Americans ate almost seven eggs per week; a decade later consumption was down to six eggs per week; and today it is around five eggs per week.

The evidence

Since 1964, when the American Heart Association first recommended that Americans change their diet, the incidence of coronary heart disease has declined about 20 percent. Over the same period, egg consumption has also declined about 20 percent. Although frequently cited, this is circumstantial evidence of the weakest kind. While egg consumption has been dropping, meat consumption has been rising, so that cholesterol intake declined only about 5 percent.

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A myriad of other changes have occurred as well. Consumption of animal fats and oils, for example, has declined some 60 percent. More Americans exercise and fewer smoke. Better treatment exists for coronary heart disease, and for related diseases such as hypertension.

Eggs are not like bullets or automobiles: If eggs kill, they kill as the result of a complex and insidious causal process. The first link in the causal chain is incontrovertible: Egg yolks do indeed contain relatively large quantities of cholesterol. The effect, however, of dietary cholesterol (i.e., the cholesterol ingested) on levels of serum cholesterol (i.e., the cholesterol in one's blood plasma) is not well understood. Furthermore, it is by no means proven that elevated serum-cholesterol levels contribute to coronary heart disease or to other cardiovascular diseases.

Theory here is weak. It may seem plausible that eating more cholesterol would increase serum cholesterol. As it turns out, however, most of the body's cholesterol is not ingested but manufactured by the body. This cholesterol synthesis is at least partially regulated by the body: If too much cholesterol is eaten, somewhat less is synthesized, and vice versa. Furthermore, the body has some control over how much of the cholesterol ingested will be absorbed by the digestive system, and how much of the cholesterol in the body will be excreted.

Theory linking serum cholesterol with coronary heart disease and other cardiovascular diseases is also tenuous. Coronary heart disease results from the atherosclerosis caused by plaques that form in arteries that feed the heart. The reasons for the formation of these occluding growths are not well understood. Numerous "risk factors" have been suggested, ranging from saturated fats, sugar, salt, alcohol, too much vitamin D and too little vitamin B_6, cigarette smoking, and sedentary life styles, to stressful personalities, sex, race, and unfortunate genes. Some recent studies indicate that the level of blood cholesterol *per se* is less closely associated with atherosclerosis than are the levels of blood lipoproteins—which result from the combination of protein with cholesterol and other fats and fat-like substances known as "lipids".[2]

[2] There are both low-density lipoproteins, which are positively associated with atherosclerosis, and high-density lipoproteins, which are negatively associated with atherosclerosis. High levels of high-density lipoproteins tend to occur in women, those who exercise vigorously, and those who consume some but not too much alcohol. Since low-density lipoproteins are the major cholesterol carrier in blood, this lipoprotein hypothesis is not so much a substitute for the cholesterol hypothesis as a refinement of it.

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With theory thus uncertain, empiricism reigns. The alleged relationship between eggs and death is based on the incriminating evidence of a host of clinical trials on animals, a few clinical trials involving human volunteers, and a series of epidemiological surveys. Indeed, for more than 60 years, laboratory rabbits, rats, chickens, dogs, and monkeys have been subjected to diets that differ widely in cholesterol content. The responses are consistent: High cholesterol intake results in atherosclerosis. Extrapolation to humans, however, is problematic, since man may have superior capabilities to control body cholesterol by restricting absorption, reducing internal synthesis, and accelerating excretion. In any case, animal studies provide little information about the shape of the human dose-response curve—the curve relating cholesterol intake to serum-cholesterol levels. The bottom line, after all, is not whether dietary cholesterol contributes to cardiovascular disease, but what the strength of the effect is. If a dozen eggs per day took 10 minutes off life expectancy, who would worry?

The most conclusive form of nutritional research involves randomized controlled trials with human subjects. Ethics and expense limit such experiments, but some research of this kind has been performed on volunteers drawn from mental institutions, prisons, and universities. The studies done through the mid-1970's were generally consistent with a simple model suggested by Ancel Keys, the senior researcher at the Laboratory of Physiological Hygiene at the University of Minnesota and the most respected authority in the field: Serum cholesterol increases with the square root of dietary cholesterol. The strength of the relationship, however, was fairly weak: At average dietary- and serum-cholesterol levels, cutting cholesterol intake in half would reduce cholesterol in the blood by only 3 percent, and doubling cholesterol intake would increase cholesterol in the blood by less than 5 percent. As Keys summarized the evidence, "dietary cholesterol has no important effect on the cholesterol in the serum."

From 1976 through 1979, a number of new experiments were conducted to assess directly the effect of adding or eliminating eggs from the American diet. These studies differ from the earlier studies synthesized by Keys in two central respects: They use whole fresh eggs rather than liquid diets or egg-yolk powder, and they use the typical U.S. diet as the base diet, rather than an artificial, specially designed diet. In other words, these experiments simulate dietary alterations that would actually be made by persons complying with the recommended "Dietary Goals for the United States."

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None of the trials found a statistically significant relationship between egg consumption and blood cholesterol. The reason is uncertain. One hypothesis is that whole eggs contain some substance that, for human beings, counterbalances the small effect of the cholesterol in egg yolks. Regardless of what the correct explanation is, however, this evidence of the harmlessness of eggs is particularly significant because it is based on the most powerful and direct kind of study, namely, randomized experiments with human subjects eating fresh eggs as a part of their ordinary diets.

Numerous epidemiological surveys of people in various communities, occupations, and countries around the world have endeavored to assess the association between cholesterol and mortality. Some surveys have examined one or both of the two key links in the causal chain, the impact of dietary cholesterol on serum cholesterol, and the impact of serum cholesterol on coronary heart disease. Other surveys have weighed the direct correlation between dietary cholesterol and coronary heart disease and between dietary cholesterol and all causes of death.

The results, with one important set of exceptions, have been contradictory and inconclusive. Populations with high cholesterol intake tend to suffer from elevated rates of coronary heart disease, but there are too many exceptions to the rule—and too many dietary and life-style differences that are closely correlated with cholesterol intake—to permit confident assessment of the influence of cholesterol. Most of the major efforts to assess the relationship between dietary-cholesterol levels and overall mortality rates have failed to detect any significant link. Studies of the association between dietary- and serum-cholesterol levels have yielded mixed results. And since the strongest correlations have been found in studies of populations among whom diet and life style differ radically from U.S. norms, these correlations may well be spurious and, in any case, are irrelevant to marginal changes in Americans' dietary habits.

One set of epidemiological investigations, however, has yielded consistent and persuasive findings. Since 1948 the health of some 2,000 men in Framingham, Massachusetts has been closely followed. Similar surveys were more recently begun in, among other places, Albany, New York; Chicago; and Tecumseh, Georgia. Each of these surveys found a statistically significant correlation between serum-cholesterol levels and incidence of coronary heart disease. Furthermore, the strength of the association was roughly the same in each study. The Framingham study, for instance, found that for males age 40 to 54, a 10-percent increase in serum cholesterol raised the

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annual risk of death from coronary heart disease by approximately 5 percent.

A prudent overestimate

Theory linking eggs and death is tenuous; some empirical studies suggest a link, but the available evidence is fragmentary, contradictory, and largely circumstantial. The evidence is sufficient to raise suspicion, but hardly enough to justify conviction. Given the whiff of suspicion, however, would it not be prudent to eschew eggs?

The answer depends on the degree of risk in eggs. If consuming eggs does indeed increase serum-cholesterol levels—and that is highly uncertain—the best estimate of the strength of the effect is that based on the judicious synthesis of the clinical evidence done by Ancel Keys. Furthermore, if elevated serum-cholesterol levels contribute to coronary heart disease, then the best available estimate of the strength of that effect is that given by the Framingham study. Combining these two equations yields what might be called a "prudent overestimate" of how bad eggs might be.

The resulting figure is of an interesting magnitude, too large to be immediately dismissed, but too small to produce overwhelming anxiety. The prudent overestimate turns out to be that each egg that the average American cuts out of his or her weekly consumption of eggs will reduce the yearly chances of dying from coronary heart disease by about one-third of 1 percent.

To gain insight into how significant or insignificant this statistic is, it is useful to measure the lengths of the shadow it casts in different directions. For a 40-year-old U.S. male the probability of death from coronary heart disease is about 4 in 10,000; for an 80-year-old male the probability increases to a bit more than 3 percent. A one-third of 1 percent reduction in these probabilities would reduce the chances of death by about one in a million for the 40-year-old and one in 10,000 for the 80-year-old. From this perspective, eggs hardly seem to be worth worrying much about.

The distinguished adversary of eggs, Dr. Jeremiah Stamler, expressed the evidence in a much more alarming fashion. Citing Keys' study and an early Framingham study, Stamler testified before the Federal Trade Commission that the addition of one egg per day to the typical U.S. diet would result in a 5.2-percent increase in the risk of coronary heart disease. Although this figure is some sixteen times larger than our one-third of 1 percent statistic, the two numbers are not inconsistent. Stamler assumed the addition of an egg

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per day to the U.S. diet; we assumed the deletion of an egg per week. Thus Stamler more than doubled egg consumption, from five per week to twelve, while we marginally decreased it from five to four. Furthermore, Stamler's figure concerns the incidence of coronary heart disease, while our estimate concerns the incidence of *death* from coronary heart disease: Only a fraction of the victims of coronary heart disease die from it each year.

Calculating the impact of a change in egg consumption on life expectancy is perhaps the most meaningful way of communicating the hazardousness of eggs. Life expectancy at birth in the United States now exceeds the Biblical allotment of three score and ten by some three years. Lifespans vary considerably around this average, but it is nonetheless a useful and well-known summary indicator. If the incidence of fatal coronary heart disease at every age could be cut by 1 percent, U.S. life expectancy would increase by roughly 12 days. Since the Keys and Framingham studies imply a one-third of 1 percent reduction in fatal coronary heart disease for each egg eschewed per week, an estimate can readily be calculated of the effect on life expectancy of the "dietary goal" of halving egg consumption (from five eggs per week, on average, to two-and-a-half eggs per week). Achieving this goal might, by this prudent overestimate, increase life expectancy by 10 days; totally eliminating eggs from our diet might increase life expectancy by 20 days.

At five eggs per week over a 73-year lifespan, the average American would eat a total of nearly 19,000 eggs. Each egg consumed thus may reduce average life expectancy by as much as a nineteen-thousandth of 20 days—which boils down to just about one minute. (In contemplating this, you might bear in mind that since every minute you live takes a minute off your remaining life, the time it takes to prepare and consume an egg may take an order of magnitude more off your life than the insidious cholesterol lurking in the yolk. Similarly, the time it is taking to read this article. . . .)

The most alarming but least meaningful perspective on the possible harmfulness of eggs involves imputing a number of deaths "caused" by eggs. Since every year some 600,000 Americans die from coronary heart disease, reducing this toll by a third of a percent would avert 2,000 deaths per year. In a sense, then, halving current egg consumption of five eggs per week might save 5,000 lives per year; eliminating eggs, some 10,000 lives per year.

There are a number of reasons why such statistics convey little useful information and, indeed, are detrimental to understanding the hazards of life. The cumulative tragedy of 5,000 or 10,000 deaths is

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beyond comprehension: Such gruesome reckoning terrifies and paralyzes the mind rather than informing it. The toll of deaths might be put in perspective by comparing it with the 2 million deaths in the United States yearly, including the hundreds of thousands of deaths from cigarette smoking and the 50,000 deaths from motor-vehicle accidents. There is, however, a more fundamental problem: No one dies from eating eggs. No medical examiner is ever likely to record eggs as the cause of death; no Sherlock Holmes is ever likely to be able to say, "The egg did it."

Eggs do not kill. What they may do is slightly accelerate the process of atherosclerosis. Reducing egg consumption will not "save" anyone's life. What it may do is prolong the lifespans of some people by a relatively short time. Thus, statistics about life expectancy tell us a great deal more than do stupefying tallies of death. And it is clear that even drastic reduction in egg consumption is likely to have little impact on the length of our lives.

By way of comparison, consider that the mandatory passive-restraint standard (i.e., the requirement that automobiles be equipped with air bags or automatic belt systems) may avert 10,000 deaths per year. But on average, the victims of fatal motor-vehicle accidents are only 35 years old; a majority are in their teens and twenties. Averting 10,000 automobile-related deaths would add roughly two months to national life expectancy and, more importantly, would add scores of years of life to those young individuals who would otherwise be killed.

Another kind of statistic on the hazardousness of eggs is worth examining. Americans consume some 60 billion eggs annually. If these eggs do indeed contribute to 10,000 deaths, then one death occurs for every 6 million eggs eaten. Viewed from this perspective, eating eggs is a remarkably safe activity.

The notion of a "microrisk" is useful here: A microrisk may be defined as a hazard that, on average, involves one chance in a million of a death per year. A half-dozen eggs thus constitute a microrisk. Other microrisks, as calculated by Harvard physicist Richard Wilson, include: smoking 1.4 cigarettes (due to cancer and heart disease); living two days in New York or Boston (due to air pollution); travelling 10 miles by bicycle (due to accidents); travelling 300 miles by car (due to accidents); living two months in an average stone or brick building (due to cancer caused by natural radioactivity); drinking Miami drinking water for one year (due to cancer caused by chloroform); eating 40 tablespoons of peanut butter (due to liver cancer caused by aflatoxin B). These statistics are of only

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limited value, partially because they, too, ignore the age at which death strikes. Nonetheless, comparisons of this kind may provide some salutary new worries to individuals who conscientiously (and perhaps righteously) avoid eggs. Instead of giving up scrambled eggs, why not give up New York?

The figures presented so far are all based on averages—and no one is average. Nonetheless, it seems clear that most Americans have extraordinarily little to fear from eggs, and that the "Dietary Goal for the United States" of cutting egg consumption in half is another case of radically misplaced priorities. Other hazardous substances and activities, and other opportunities for health and safety policy, would seem to be far more promising targets for Senate investigation and national goal-setting than the relatively benign egg.

Some objections

Diehard believers in the villainy of eggs can raise a number of objections to these various calculations. First, a couple of studies show a stronger relationship between cholesterol-intake and blood-cholesterol levels than that calculated by Ancel Keys. Many more studies, however, show a weaker relationship. Keys' equation was based on a synthesis of a variety of studies done through the mid-1970's, including the two studies showing a strong link. As indicated earlier, clinical trials with whole-egg diets completed since then have found no significant relationship between dietary and serum cholesterol. In reviewing this new evidence, Keys' judicious conclusion was that "it seems probable that [my estimate] is an overestimate of the effect of exogenous cholesterol in ordinary diets."

Second, in some epidemiological surveys the estimated impact of blood cholesterol on coronary heart disease is greater than that in the Framingham study. Most of the major epidemiological surveys, however, are consistent with the Framingham results. Furthermore, in nearly all of the studies the direct link between serum cholesterol and all causes of death is either weak or insignificant: The overall mortality effect of eggs as estimated by looking at the effect on coronary heart disease is consequently probably an overestimate. And even if blood-cholesterol levels are linked with coronary heart disease, *changing* the level may have a delayed and muted effect: Arteriosclerosis may be an unalterable legacy of past levels of blood cholesterol and associated lipids. As E. H. Ahrens—a noted arteriosclerosis researcher—admitted, at present our knowledge is limited:

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> We simply do not know how quickly the effects of lipid-lowering can be expected to affect the incidence of new events of coronary heart disease, and, indeed, the benefits obtained by lipid-lowering in prevention of new events of coronary heart disease may be realized very slowly (if at all).

Third, elevated serum-cholesterol levels have been implicated in a variety of atherosclerotic diseases other than coronary heart disease, including stroke. The evidence here, however, is even weaker than the inconclusive evidence on the link between serum cholesterol and coronary heart disease. Moreover, deaths from these other atherosclerotic diseases total less than a quarter of the deaths from coronary heart disease.

Fourth, eggs contain not only cholesterol but also saturated fats —and consumption of saturated fats appears to raise serum-cholesterol levels. Fortunately, eggs also contain polyunsaturated fats—and consumption of polyunsaturated fats appears to lower serum-cholesterol levels. The ratio of polyunsaturated to saturated fats in eggs is such that in Ancel Keys' equation these two effects virtually cancel each other.

A final simplification in our calculations merits notice: Both the Keys and the Framingham studies pertain to white males. The links between dietary and serum cholesterol and between serum cholesterol and atherosclerosis seem to be substantially weaker for females than males and for blacks than whites. To the extent this is correct, extrapolation of evidence on white males to the total population will exaggerate the average harmfulness of eggs. Furthermore, women and blacks who avoid eggs will gain even less than the miniscule "prudent overestimate" of the gain achieved by white males.

High-risk groups

What, however, about those unfortunate individuals who face an elevated likelihood of death from coronary heart disease? Consider, for example, a 48-year-old Framingham male who smokes two packs of cigarettes a day, who has very high blood pressure (say, 180 systolic over 110 diastolic), who has a very high serum-cholesterol level (say, 310 milligrams per deciliter), and who consumes two dozen eggs per week as well as some 600 milligrams of cholesterol per day from meat. If such a person completely eliminated eggs from his diet but changed nothing else, then the Keys-plus-Framingham estimate indicates that he would lower his chance of dying from coronary heart disease by 6 percent. That is,

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despite the drastic change in diet, the optimistic assessment of the new level of risk would still be 94 percent of the old level. Furthermore, suppose this endangered male improved his life chances by reducing his blood pressure and cigarette consumption—and then contemplated banishing eggs from his diet. Here, too, the benefit would merely be an additional reduction of roughly 6 percent in the probability of a fatal heart attack.

The Framingham study indicates that the chances the high-risk 48-year-old male will celebrate his 60th birthday are just over 60 percent. If he banished the two dozen eggs per week from his diet but did nothing more, his chances of reaching age 60 might increase by half a percentage point. In comparison, if he refrained from smoking *or* if he brought his high blood pressure down to a more normal level (say, 140 over 90), he could cut his chances of dying before age 60 from nearly 40 percent to around 16 percent—*a gain almost 50 times greater than the half-a-percent gain achieved by sacrificing all those eggs.*

Even for high-risk individuals, then, the hazard of eggs is of tertiary significance. But this is not to say eggs are of no significance. A few people seem to suffer from a biological deficiency that causes their serum-cholesterol levels to vary substantially with cholesterol intake. For such individuals it may indeed be prudent to spurn eggs and other sources of cholesterol. To the extent, however, that preoccupation with eggs lulls the typical high-risk individual into complacency or otherwise detracts from efforts to control smoking or blood pressure, the assault on eggs may kill more often than save.

Which is worse: chicken or eggs?

As Garrett Hardin so profoundly observed, "you can never do merely one thing." If fewer eggs are eaten, either less is eaten in total or something else is eaten instead. The *net* health impact of consuming more or fewer eggs depends on the new dietary equilibrium compared with the old. So far this analysis, like nearly all nutritional analyses, has focused on only one column of the balance sheet—it is time to examine the other column.

Eggs, naturally enough, are a major source of high-quality protein and of a variety of essential vitamins and minerals. Two eggs contain a quarter of the National Academy of Sciences' recommended daily adult dietary allowance of protein, more than a quarter of the recommended allowance of vitamin A and of phosphorus, and around a fifth of the recommended allowance of ribo-

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flavin and of iron. Eating fewer eggs without substituting anything else may consequently cause or exacerbate nutritional deficiencies. Such deficiencies are widespread among the poor and the poorly educated and among pregnant women. Furthermore, many individuals would achieve this kind of uncompensated reduction in egg consumption by skipping breakfast, thus violating one of Drs. Belloc and Breslow's extensively publicized "seven good rules of health."

Since the protein in eggs is in the whites and the cholesterol is in the yolks, some have suggested avoiding not eggs, but yolks. Dr. Jeremiah Stamler, for example, testified before the Senate Select Committee on Nutrition: "In our home we eat a lot of egg whites. We never eat the yolk." An alternative to this unappetizing suggestion is to use egg substitutes such as "Egg Beaters," which contain natural egg whites and artificial egg yolks. At least some people, however, might consider the taste of Fleischman's blend of dry milk, vegetable lecithin, mono- and di-glycerides, propylene glycol monostearate, cellulose and xanthan gums, trisodium and triethyl citrate, aluminum sulfate, artificial flavor, and artificial color, no match for the taste of Mother Nature's yolk. In addition, "Egg Beaters" appear to be inferior to eggs in nutritional value; there have been no human clinical trials, but one study of rats found adverse effects:

> Both the mothers and pups fed Egg Beaters developed diarrhea within one week; those fed whole egg did not. . . . All of those fed Egg Beaters died within three to four weeks after weaning. The general appearance of the rats fed Egg Beaters indicated a gross deficiency in one or more nutritional factors as compared to those fed whole eggs.

Vegetable sources of protein are low in cholesterol and saturated fats—but most Americans insist on supplementing their beans and on sandwiching their bread around some animal product. Furthermore, strict vegetarians must vigilantly balance their diet to provide adequate amounts of the eight essential amino acids. Unbalanced vegetarian diets result not only in protein deficiencies but also in increased serum-cholesterol levels.

Given the lack of general appeal of egg whites, Egg Beaters, and beans, the principal substitutes for eggs are likely to be meats and junk foods. For breakfast, a couple of poached eggs on toast may yield to a bowl of sugar-coated corn pops or perhaps to a greasy, sugary jelly roll. A hamburger may replace an egg-salad sandwich for lunch and yet another steak or chicken may banish the occasional omelet, soufflé, or quiche from the supper table. Over the last two decades, as egg consumption has declined meat consumption has increased. Recently a sharp rise in meat prices has halted this trend,

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leading *The Wall Street Journal* to report that "high-priced meat has consumers scrambling to find substitutes, and increasingly their answer is eggs."

Given the sustained vigor of the assault on eggs, it may be surprising to learn that ounce for ounce and protein for protein, the effect of eggs on serum-cholesterol levels appears to be roughly comparable to that of most meat and milk products. Eggs are rich in cholesterol, but they are low in unwholesome saturated fats and high in beneficial polyunsaturated fats. Keys' equation implies that the average male's serum-cholesterol level would remain unchanged if he ate two eggs instead of eating: 1 ounce of butter or shredded sweetened coconut; 2 ounces of Kosher frankfurter, untrimmed T-bone or Porterhouse steak, cheddar, swiss, or processed cheese, or plain sweet milk chocolate; 3 ounces of spareribs, bacon, restaurant meatloaf, or cured corned beef; 4 ounces of regular ground beef; 5 ounces of domestic duck or chocolate cake; 6 ounces of trimmed beef club steak or ice cream; 7 ounces of trimmed T-bone steak, trimmed lamb chops, trimmed pork loin chops, calves' liver, or chicken à la king; or 8 ounces of stewed hen or caviar.

Some other foods have much less impact on serum-cholesterol levels than eggs do: It would take roughly a pound of most fish or shellfish dishes, and most kinds of poultry dishes, to equal two eggs. So eggs are indeed somewhat worse than chicken. The list demonstrates, however, how readily eggs could be salubriously substituted for a variety of common foods. Most noteworthy perhaps is the encouraging finding that a two-egg omelet is "safer" than a frankfurter or a cheese sandwich and as safe as a quarter-pound hamburger.

Since eating eggs is hardly hazardous, the meat and dairy equivalents of eggs can also be eaten with relish rather than fear. There is little reason to massively switch from steaks to soufflés, though a few lives might be saved if Americans had eggs more often for lunch and dinner and ground meat a bit less often.

Substituting eggs for meat has another advantage: Eggs are the cheapest common source of protein; they cost about one dollar per 100 grams of protein. Hamburger, beans, and bread are all roughly 50 percent more expensive, per unit of usable protein, than are eggs. Furthermore, eggs serve as the basis for an extraordinarily wide range of recipes. Eggs can be scrambled, fried, poached, shirred, baked, soft-boiled, hard-boiled, or coddled. They can be curried, deviled, masked, whipped, and variously molded. They are the *sine qua non* of good dough—whether for bread, pasta, pie crusts, cakes,

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pancakes, crepes, or waffles. Sauces like mayonnaise, hollandaise, and bernaise depend on eggs; dishes as diversely cosmopolitan as Frittata, Scotch Woodcock, Egg Foo Young, and Broccoli Timbale all feature the supremely versatile egg.

The importance of counting

Delicious, nutritious, inexpensive, a minor source of risk compared with the other hazards of daily life, and less hazardous than a variety of other common foods, why have eggs been debased rather than exalted? The assault on eggs seems to be yet another manifestation of the hypochondria raging among various consumer advocates and "public interest" groups, and among policy makers in the gamut of government agencies and commissions on health and safety. As is typically the case with their descriptions of hazards, the picture unveiled for the public is painted in starkest black and white: Cholesterol is bad, eggs contain cholesterol, therefore eggs are bad. The mere existence of a mortal risk is all that matters: The *degree* of the risk—the probability of death earlier than otherwise—is not even guesstimated. The possibility that the outcome of the "cure"—a switch, say, from eggs to ground meat—may be worse than the disease is neglected; and although there is more to life than death, factors such as pleasure and cost are ignored. The result is a paranoiac lack of a sense of priorities concerning where the most lives can be saved most efficiently. Appropriately targeted policies could undoubtedly save substantial numbers of lives in this country. But egg smashing, and similar fads and fancies, are costly detours.

As Samuel Johnson put it, when no "counting" is done, "everything . . . float[s] in the mind indefinitely." It is past time to do far more of the kind of policy-relevant counting that so readily demonstrates the misguided nature of prescriptions such as the national dietary goal of cutting egg consumption in half. The Humpty-Dumpty assault on eggs is a lesson in how well-intentioned but poorly-thought-out attempts to save lives may only succeed in making life less worth living.

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Crime in American public schools

JACKSON TOBY

In the early 1970's Senator Birch Bayh's Subcommittee to Investigate Juvenile Delinquency heard alarming reports of violence and vandalism in American public schools—not just occasionally or in the central cities but chronically and all over the United States. Partly in response to these hearings, partly because of increasing preoccupation with school crime by newspapers, magazines, and television, the 93rd Congress passed an amendment to an education bill in 1974 requiring the Secretary of the Department of Health, Education, and Welfare to conduct a survey to determine the extent and seriousness of school crime.

The study was an elaborate one. Principals in 4,014 schools in large cities, smaller cities, suburban areas, and rural areas filled out questionnaires and returned them to Washington. Then 31,373 students and 23,895 teachers in 642 junior and senior high schools throughout the country were questioned about their experiences with school crime—in particular whether they themselves were victimized and, if so, how. From among the 31,373 students who filled out anonymous questionnaires, 6,283 were selected randomly for individual interviews on the same subject. Discrepancies between questionnaire reports of victimization and interview reports of victimization were probed to find out exactly what respondents meant

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when they answered that they had been attacked, robbed, or had property stolen from their desks or lockers. Finally, intensive field studies were conducted in 10 schools, schools that had had especially serious crime problems in the past and had made some progress in overcoming them.

In January 1978, the 350-page report to Congress, *Violent Schools —Safe Schools,* was published by the National Institute of Education. Though a scientific report, inevitably it had political overtones. Public schools with reputations for crime and violence tended to be located in the inner cities and to enroll high proportions of minority students from low-income families; average reading and mathematical levels were usually one or more grades behind national norms. Was there a causal relationship among high crime rates, low academic achievement, and a high proportion of minority students? Were parents with middle-class values enrolling their children in private or parochial schools out of fear of crime as well as out of desire for better academic instruction for their children? And, if so, did the problem of school crime explain an appreciable amount of middle-class flight from inner-city schools?

Perhaps because of the sensitivity of these issues, the report handled the data cautiously, drawing attention to some differences in the incidence of school crime and skipping lightly over others. The report showed that the crime problem was worse in junior high schools than in senior high schools, but it required careful examination of a table in an appendix to find statistics demonstrating that students in urban schools were robbed and assaulted more frequently than students in suburban or rural schools. (These statistics are reproduced in Tables I and II, below and on the next page, respectively.) But the differences are not as great as some of us might have expected. Statistics on the victimization of teachers, presented in Table III on page 22, were reported in an early chapter and showed unequivocally that urban teachers were more likely to be victimized than suburban or rural teachers—especially teachers in

TABLE I. *Percent of Students Who Reported Being Robbed within the Past Month**

	URBAN SCHOOLS	SUBURBAN SCHOOLS	RURAL SCHOOLS
Junior High Schools	9.5%	7.5%	7.1%
Senior High Schools	3.9	2.4	3.5

* SOURCE: *Violent Schools — Safe Schools,* Appendix A, pp. A6–A7.

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TABLE II. *Percent of Students Who Reported Being Assaulted within the Past Month**

	URBAN SCHOOLS	SUBURBAN SCHOOLS	RURAL SCHOOLS
Junior High Schools	8.2%	7.2%	6.2%
Senior High Schools	4.0	3.0	3.4

* SOURCE: *Violent Schools – Safe Schools*, Appendix A, pp. A6–A7.

the largest cities. But the report tells us more than that, and we will present its findings in the form of answers to key questions on school crime.

Answered and unanswered questions

1. *How much real crime is there in the schools? Does it consist mostly of juvenile mischief given the alarming labels, "crime" and "violence," by exaggerated newspaper accounts, or is school crime mostly acts that adult perpetrators would be arrested and prosecuted for?*

Schools are plagued with real crime, according to the study. *Violent Schools–Safe Schools* was not mainly concerned with mischief or with foul language—although it mentioned in passing that a majority of American junior-high-school teachers were sworn at by their students or were the target of obscene gestures within the month preceding the survey. The report was concerned mainly with illegal *acts* and with the fear those acts aroused, not with language or gestures. Both on the questionnaires and in personal interviews, students were asked questions designed to provide an estimate of the amount of theft and violence in public secondary schools:

> In [the previous month] did anyone steal things of yours from your desk, locker, or other place at school?
>
> Did anyone take money or things directly from you by force, weapons, or threats at school in [the previous month]?
>
> At school in [the previous month] did anyone physically attack and hurt you?

Eleven percent of secondary-school students reported in personal interviews having something worth more than a dollar stolen from them in the past month. A fifth of these thefts involved property worth $10 or more. One-half of one percent of secondary-school students reported being *robbed* in a month's time—that is, having property taken from them by force, weapons, or threats. One out of nine of these robberies resulted in physical injuries to the victims.

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Students also told of being assaulted. One-and-a-third percent of secondary-school students reported being attacked over the course of a month, and two-fifths of these were physically injured. (However, only 14 percent of the assaults resulted in injuries serious enough to require medical attention.)

These percentages probably underestimated the true volume of student victimization. They were based on face-to-face *interviews* with students. The same questions asked of samples of students by means of anonymous *questionnaires* produced estimates of victimization about twice as high overall, and in the case of robbery four times as high. (Tables I and II are based on student questionnaires rather than on interviews.) Methodological studies conducted by the school-crime researchers convinced them that the interview results were more valid than the questionnaire results for estimating the extent of victimization; some students might have had difficulty reading and understanding the questionnaire. On the other hand, fear of crime kept some students from attending school. In reply to the question, "Did you stay at home any time in [the previous month] because someone might hurt you or bother you at school?" 8 percent of the students in big-city junior high schools said "yes," as compared with 4 percent in rural junior high schools and 5 percent in suburban and smaller-city junior high schools. Since the students who had an opportunity to reply to this question were those attending school on the day the questionnaire was administered (or on a subsequent make-up session), students in the sample who failed to fill out their questionnaires may have contained a higher proportion of victims of school crime and a higher percentage of those frightened into truancy.

The report also contained data on the victimization of teachers, data derived from questionnaires similar to those filled out by students. (There were no teacher interviews, perhaps because teachers were presumed more capable of understanding the questions and replying appropriately.) Table III on page 22 shows that an appreciable proportion of teachers reported property stolen, but that only a small proportion of teachers reported robberies and assaults. However, robberies were three times as common in inner-city schools as in rural schools, and assaults were nine times as common. Even in big-city secondary schools, less than 2 percent of the teachers surveyed cited assaults by students within the past month, but threats were more frequent. Thirty-six percent of inner-city junior-high-school teachers reported that students threatened to hurt them, as did 24 percent of inner-city high school teachers. Understandably,

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TABLE III. *Percent of Teachers Who Reported Being Victimized within the Past Month: Thefts, Robberies, Assaults**

COMMUNITY SIZE	KIND OF VICTIMIZATION		
	THEFTS	ROBBERIES	PHYSICAL ATTACKS
Cities of 500,000 population or more	16.7%	1.3%	1.8%
Smaller Cities	15.8	0.6	0.7
Suburban Areas	12.0	0.5	0.4
Rural Areas	9.5	0.4	0.2

* SOURCE: *Violent Schools — Safe Schools*, p. 68.

many teachers said they were afraid of their students. Twenty-eight percent of big-city teachers reported hesitating to confront misbehaving students for fear of their own safety, as did 18 percent of smaller-city teachers, 11 percent of suburban teachers, and 7 percent of rural teachers.

Principals were questioned about a variety of crimes against the school as a community: trespassing, breaking and entering, theft of school property, vandalism, and the like. Based on these reports as well as on data collected by the National Center for Educational Statistics in a companion study, *Violent Schools—Safe Schools* estimated the monetary cost alone of replacing damaged or stolen property as $200 million per year.

2. *Are intruders from the outside community responsible for a major portion of school crime, or are the students themselves the main perpetrators of thefts, assaults, robberies, and vandalism? And, if the perpetrators are students, which students?*

According to the report, the notion that intruders are responsible for a great deal of school crime is a myth:

> Preventive strategies designed to keep "intruders" from entering the school assume that offenses in the school are usually committed by outsiders; relative safety is believed to require keeping students inside the school and others who do not belong there outside.
>
> Our data, however, suggest that rather than locking most offenders out, these strategies seem to lock the offenders in with their potential victims. Except for trespassing and break-ins, the great majority . . . of all reported offenses for which information about offenders is available were committed by current students at the school in question. . . . Even in the case of breaking and entering, slightly more than half (56 percent) of these offenses were committed by current students.

Another belief about perpetrators that the report called into question was that older students preyed on younger students. Although

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younger students were disproportionately victimized, three-quarters of those who attacked or robbed them were roughly the same age, according to estimates of the victims themselves.

Schools in which a majority of students were from minority backgrounds had rates of assault and robbery against both students and teachers twice as high as schools where white students predominated. But the data did not explain this finding. The issue is *what* characteristics of minorities make them more likely to engage in school crime. Here the report offered tantalizing hints that educational failure was causally implicated in school crime, but nothing conclusive. Teachers who said that they taught a majority of low-ability students were five times as likely to report being attacked and twice as likely to report being robbed as teachers who said that less than a third of their students were of low ability. Teachers who said that a majority of their students were "underachievers" were three times as likely to report being attacked and about 50 percent more likely to report being robbed than teachers who said that less than a third of their students were underachievers.

Staff members of the National Institute of Education had anticipated that students would prove to be the main perpetrators of school crime and had planned to include on the student questionnaire questions about crimes the students themselves had committed. This would have provided valuable information about the characteristics of student perpetrators and, inferentially, about perpetrators generally. But boards of education resisted; questioning students about their own crimes, even anonymously, was likely to arouse objections from parents, students, and perhaps from community groups. The plan was dropped.

The report did offer impressions about perpetrators based on its field studies in 10 schools—that is, on extensive observation over a period of at least two weeks in each school, and on intensive interviews with school counselors, school aides, security personnel, parents, and representatives of community organizations. Professor A. J. Ianni of Teachers College, Columbia University, the director of the field studies, had this impression of school-crime perpetrators:

> There was general agreement among respondents in many of the schools that a small percentage of students—the figure 10 percent was frequently cited—form a hard core of disruptive students who are responsible for most of the vandalism and violence in schools. While this troublesome group did not seem to be identifiable in terms of any specific racial, ethnic, or socioeconomic status background, school staff commonly described them as students who were also having difficulty

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academically, were frequently in trouble in the community, and tended to come from troubled homes. These students were easily identifiable and generally seemed to be known both to staff and other students because of the frequency with which they were in trouble. These same respondents indicated that in their experience this group of troublesome students could find allies among the other students when specific issues, situations, or problems arose. Violence and disruptive behavior is thus described as interactive with a small group of students frequently causing problems and at times setting off a chain reaction among other student groups.

3. Do attacks on and robberies of students occur mainly during classes or mainly before, after, and between classes?

Not surprisingly, violence directed at other students was less likely to occur during classes than at other times. Thus, the presence of teachers seemed to protect students against violence. Apparently, hallways and stairs (where teacher supervision was weak) were the sites for about a third of the violent acts, and other poorly supervised places—toilets, cafeterias, and locker rooms—the sites for another third.

The report did not ask whether violence on the way to and from the school building was a special problem. If the trip to and from school were dangerous for students in the inner cities, such schools would continue to be perceived as dangerous even though violence might be adequately controlled inside the school building itself.

4. Who are the main victims of school crime?

Younger students and the youngest, least-experienced teachers were most likely to be attacked or robbed. However, *male* students were more than twice as likely to be victims of both forms of violence than *female* students. And male teachers were somewhat more likely to be attacked than female teachers, although less likely to be robbed. The most likely explanation for the fact that schools are more dangerous for males than for females is that since males are the main authors of violent crimes, their victims tend to be the other males with whom they associate. Propinquity, both physical and psychological, increases the likelihood of victimization.

Propinquity between perpetrators and victims also explains the higher rate of victimization of students and teachers from minority backgrounds than of white students and teachers. Minority students and teachers were more likely to be attacked and robbed because their schools tended to be urban schools with high crime rates.

5. What are the causes of school crime?

The word "cause" does not appear in the index of the report. This was not an oversight. The safe-schools study was designed to

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describe the crime problem in American public schools during a short period of time (1976 to 1977), not to probe causes. However, Congress expected that the study would show how school crime could be prevented. And this objective implied some knowledge of causes. The report waffled. It spoke of "potential contributions" to school crime and of "several factors that appear likely to have general explanatory value with respect to school crimes."

But more explicit concern with the causes of school crime would have made possible greater realism about what could be explained and what could be done. For example, even though the report suggested on the basis of other studies that levels of school crime had increased from the 1960's to the 1970's, the safe-schools study itself collected no data on trends in school crime; hence, it could not throw light on causes of the *increase* in school crime. Furthermore, it could not explain why some youngsters committed crimes and others in the same schools did not; it had not collected data from offenders, only from victims. All the study could do was to contrast the crime rates in some of the 642 schools of the sample with those of others and to attempt to identify characteristics of high-crime and low-crime schools. The report did this. Thus, high levels of violent crime occurred in schools with above-average proportions of children from families of low socioeconomic status and in schools located in high-crime neighborhoods. But its authors were extremely cautious in interpreting the associations in causal terms.

There are hints one can trace out. Among all the schools in the survey—urban, suburban, and rural—a strong relationship existed between laxness in enforcing school rules, as judged by teachers and students in the school, and rate of violent crime. But surrounding neighborhoods of low socioeconomic status and high crime resulted in lax rule enforcement only in urban schools, not in suburban or rural schools. Perhaps in high-crime communities of low socioeconomic status the enforcement of school rules was difficult for teachers and principals but not, as the rural and suburban data showed, impossible. Perhaps an urban school with sufficiently creative leadership could also enforce rules despite its adverse socioeconomic environment.

6. Did the report suggest anything that the federal government can do to reduce crime in the schools?

There *were* recommendations in the concluding chapter of the report, lots of them—but they were not recommendations for Congressional action nor indeed were they National Institute of Education recommendations. They were suggestions from school princi-

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pals, teachers, and students, for controlling school crime. Principals and teachers were asked to write in their own words replies to the following question: "What measures would you recommend to schools having problems with vandalism, personal attacks, and theft?" Students were asked to make recommendations by means of a similar question: "If a school had a problem with personal attacks, theft, and property destruction, what could be done to make it safer?" The answers by principals, teachers, and students were grouped in the same eight categories: 1) security devices, 2) security personnel, 3) discipline and supervision, 4) curriculum and counseling, 5) training and organizational change, 6) physical-plant improvement, 7) parental involvement and community relations, and 8) improvement of school climate. Within each category, responses were carefully coded into subcategories to facilitate statistical tabulation. Although the victims and potential victims of school crime are not necessarily qualified to devise effective solutions, it may be worth noting that "discipline and supervision"[1] was the most popular recommendation of students and teachers as well as of principals.

The report also described—based on questionnaire responses from principals—efforts made by schools to cope with crime, and discussed the modest success (in the opinion of principals) of these different efforts to reduce "vandalism, personal attacks, and thefts." Big-city principals reported the highest proportion of successful practices, mostly in the areas of "security devices" and "discipline and supervision"; Table IV shows that, except for paddling—a measure more popular in rural and suburban schools and in smaller cities—schools in the big cities made the most serious disciplinary and control efforts. Aside from the impressionistic judgments of the principals, the report did not attempt to evaluate the effectiveness of these disciplinary efforts.

Social changes and school crime

The report described the current situation rather than attempting to explain how a less orderly school environment developed. The report did not consider social trends in American society that made it more difficult for public schools to control predatory, violent, or malicious student behavior.

[1] The responses classified under this heading included "enforcement of rules, suspensions, etc.," "restitution, payment," "special classes, expulsion," "monitoring, watching," "controlling student movement, I.D.," and others.

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TABLE IV. *Percent of Schools Using Various Discipline and Control Procedures, by Location**

TYPE OF PROCEDURE	LARGE CITIES	SMALL CITIES	SUBURBAN AREAS	RURAL AREAS
Students must show I.D. card to authorized personnel when requested	6%	3%	3%	2%
Students must carry hall passes if out of class	41	23	20	18
Visitors must check in at the office	67	56	49	39
Suspension	47	36	33	27
Expulsion	6	3	4	4
Paddling	17	34	33	42
Assignment to special day-long class for disruptive students	10	7	7	5
Transfer to another regular school (social transfer)	35	19	7	3
Transfer to special school for disruptive students	10	7	4	2
Referral to community mental-health agency as disruptive student	40	29	20	17

* SOURCE: *Violent Schools — Safe Schools*, p. 147.

Historically, the development of American public education increasingly separated the school from the students' families and neighborhoods. Even the one-room schoolhouse of rural America represented separation of the educational process from the family. But the consolidated school districts in nonmetropolitan areas and the jumbo schools of the inner city carried separation much further. There were good reasons why large schools developed. The bigger the school, the lower the per-capita cost of education tended to be. The bigger the school, the more feasible it was to hire teachers with academic specialties like art, music, drama, and advanced mathematics. The bigger the school, the more likely that teachers and administrators could operate according to professional standards instead of in response to local sensitivities—for example, in teaching biological evolution or in designing a sex-education curriculum. But the unintended consequence of large schools that operated efficiently by bureaucratic and professional standards was to make them relatively independent of the local community. The advantages of

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autonomy were obvious. The disadvantages took longer to reveal themselves.

The main disadvantage was that students developed distinctive subcultures only tangentially related to education. Thus, in the 1950's Professor James S. Coleman showed in his book, *The Adolescent Society,* that American high school students seemed more preoccupied with athletics and personal popularity than with intellectual achievement. Students were "doing their own thing," and their thing was not what teachers and principals were mainly concerned about. Presumably, if parents had been more closely involved in the educational process, they would have strengthened the academic impact of teachers. Even in the 1950's, student subcultures at school facilitated misbehavior; in New York and other large cities, fights between members of street gangs from different neighborhoods sometimes broke out in secondary schools. However, Soviet achievements in space during the 1950's drew more attention to academic performance than to school crime and misbehavior. Insofar as community adults were brought into schools as teacher aides, they were introduced not to facilitate control over student misbehavior but to improve academic performance.

Until the 1960's and 1970's school administrators did not realize that order is chronically problematical when many hundreds of young people come together for congregate education. Principals did not like to call the police, preferring to organize their own disciplinary procedures. They did not believe in security guards, preferring to use teachers to monitor behavior in the halls and lunchrooms. They did not tell school architects about the need for what has come to be called "defensible space," and as a result schools were built with too many ways to gain entrance from the outside and too many rooms and corridors where surveillance was difficult. Above all, they did not consider that they had lost control over potential student misbehavior when parents were kept far away, where they could not see or know how their children were behaving. The focus of PTA's was the curriculum, and it was the better-educated, middle-class parents who tended to join them. In short, isolation of the school from the local community always means that if a large enough proportion of students misbehave, teachers and principals cannot maintain order. It was not until the 1960's and 1970's, however, that this potentiality became a reality in many American schools, especially inner-city schools. The following paragraphs come from a case study of a particularly disorderly New York high school reported in *Violent Schools–Safe Schools*:

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When the student turmoil in the late 1960's led to frequent fires started by students' dropping matches into other students' lockers, all the lockers, with the exception of those in the gyms, were closed and remain so. As a result, students must carry lunches and other belongings, and these are sometimes stolen when they are left out. Vandalism, while not nearly as dramatic or widespread as it was during the time of the disruptions, still presents problems. The cost to the school in 1976 for repainting or cleaning off graffiti was approximately $5,000. The principal explains that graffiti and the breaking of windows are a constant problem both because of the size of the school and the reduction in the custodial staff.

Another trend helping to explain how a less orderly school environment developed was the continuing pressure to keep children in school longer—on the assumption that children needed all the education they could get to cope with a complicated urban industrial society. The positive side of this development was rising educational levels. Greater proportions of the age cohort graduated from high school and went on to post-secondary education than ever before. The negative aspect of compulsory-school-attendance laws and of informal pressure to stay in school longer was that youngsters who didn't wish further education were compelled to remain in school. They were, in a sense, prisoners; understandably, some of them became troublemakers. When they became insolent, violent, or criminal, there was little the public schools could do about them. (The private schools simply expelled them—that is, sent them to public schools.) Since society now believes that public schools are ultimately responsible for primary and secondary education for all children—those with special physical, emotional, or behavior problems are diverted to special schools only as a last resort—public schools are less able to control their students than they used to be.

Discovering children's rights

A third trend indirectly affecting the school-crime problem was the increasing sensitivity of public schools to the rights of children. A generation ago, it was possible for principals to rule schools autocratically, to suspend or expel students without much regard for procedural niceties. Injustices occurred; children were "pushed out" of schools because they were disliked by school officials. But this arbitrariness enabled school administrators to control the situation when real misbehavior occurred. Assaults on teachers were punished so swiftly that they were almost unthinkable. Even disrespectful language was unusual. Today school officials are required to observe

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due process in handling student discipline. Hearings are necessary. Witnesses must confirm suspicions. Appeals are provided for. Greater democratization of schools means that unruly students get better protection against school officials, and most students get less protection from their classmates.

Related to this third trend is a fourth: the decreased ability of schools to get help with discipline problems from the juvenile courts. Like the schools themselves, the juvenile courts have become more attentive to children's rights and less willing to exile children to a correctional Siberia. More than a decade ago the Supreme Court ruled in the *Gault* case that children could not be sent to juvenile prisons for "rehabilitation" unless proof existed that they had committed some crime for which imprisonment was appropriate.

The *Gault* decision set off a revolution in juvenile-court procedures and fostered a growing reluctance on the part of juvenile-court judges to send youngsters "away." Furthermore, a number of state legislatures restricted the discretion of juvenile-court judges. In New York and New Jersey, for example, juvenile-court judges may not commit a youngster to correctional institutions for "status offenses"—that is, for behavior that would not be a crime if done by adults. Thus truancy or ungovernable behavior in school or at home are not grounds for incarceration in New York and New Jersey. Many experts believe that the differentiation of juvenile delinquents from "Persons in Need of Supervision" is a progressive reform. But one consequence of this reform is that the public schools cannot easily persuade juvenile courts to act in school-problem cases. Student abuse of teachers, for example, is more difficult to cope with.

These social changes provide background for understanding the most important change of all: the erosion of the authority of the classroom teacher. If run-of-the-mill teachers could control effectively the behavior of students in their classes, in hallways, and in lunchrooms, there would be considerably less school violence—though theft and vandalism still might be problems. Nowadays some individual teachers can control their classes through personal charisma. But what has changed is that the *role* of teacher no longer has the prestige it once did for students and their parents, and so less forceful, less experienced, or less effective teachers cannot rely on the prestige of the role to maintain control. They are on their own in a sense that the previous generation of teachers was not. The most visible symptom of loss of automatic respect is assaults on teachers, mainly from students—but occasionally from parents themselves!

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According to the report, somewhat more than 1 percent of American seventh-, eighth-, and ninth-grade teachers were assaulted by their students *every month.* Male teachers reported being attacked more frequently than female teachers, younger teachers more often than older teachers, inexperienced teachers more than experienced teachers, minority teachers more than white teachers.

What happened to erode the almost sacred status of teachers? This question was not dealt with in the report. Doubtless, lessened respect for teachers is related to fundamental cultural changes by which many authority figures—parents, police, government officials, military leaders, employers—have been removed from psychological pedestals. In the case of teachers, however, the general demythologizing process was amplified by special criticism. Best-selling books of the 1960's like John Holt's *Why Children Fail,* James Herndon's *The Way It Spozed to Be,* Jonathan Kozol's *Death at an Early Age: The Destruction of the Minds and Hearts of Negro Children in the Boston Public Schools,* and Herbert Kohl's *36 Children,* portrayed teachers, especially white middle-class teachers, as the villains of education—insensitive, authoritarian, and even racist. The failure of large numbers of children in inner-city schools to learn as much as they ought to have learned by national standards was interpreted as a responsibility of the schools and of the teachers. These books did not pretend to be quantitative surveys. They made no estimates of the percentages of American teachers who resembled the anecdotal examples the authors provided. But the consistency of the illustrations created an image of American teachers as, at best, inept and unfeeling.

The authors probably intended to exonerate youngsters for lack of academic success by portraying them as victims of failings in the educational system. *The effect on readers was to blame teachers for the poor results.* To be sure, few inner-city residents read these books. Yet the anti-establishment ideas that they contained percolated through American society as the clichés of television interviews and college education courses. Because the 1960's witnessed an enormous growth of enrollments in higher education, especially of minority community-college students, the notion that teachers could not be trusted spread from these books to college classrooms to American families, including minority families. Striking a teacher might almost appear to be a deserved punishment. Of course, only a tiny percentage of students and their parents subscribed to this ideologically extreme position. Even among parents and students who assaulted teachers, momentary anger rather than ideological

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conviction was probably the predominant motivation. Nevertheless, ideologically motivated attacks had symbolic impact. They suggested to children who witnessed them or heard about them that distrust of teachers must have *some* basis. Why else were people so angry? Thus ideological extremism fed on itself, increasing the mutual suspicions of students and teachers in inner-city schools and motivating some teachers to retire early and others to leave the teaching profession for other occupations.

Another indication of the erosion of teacher authority has been the decline of homework in secondary schools. When teachers could depend on all but a handful of students to turn in required written homework, they could assign homework and mean it. The slackers could be disciplined. But when teachers can no longer count on a majority of students doing their homework, the assignment of homework becomes a meaningless ritual, and many teachers give up. Of course, when homework is negligible, classroom instruction is less effective. The decline of homework also suggests that teachers lack authority to induce students to do *anything* they don't want to do: to attend school regularly, to keep quiet so an orderly recitation can proceed, to refrain from annoying a disliked classmate. Indeed, there are American public schools where one-third of the enrolled students are absent on an average school day. In the classrooms of such schools, teachers cannot build on information communicated and presumably learned during the previous lesson, because so many members of the class missed it.

To sum up: I believe school crime can best be understood in the context of social changes that separated secondary schools from effective family and neighborhood influences, that have kept older adolescents enrolled in school whether they craved education or not, that made it extremely difficult for schools to expel students guilty of intractable and even violent behavior, and that reduced the authority of classroom teachers.

Why care about school crime?

School crime receives attention mainly because individual teachers and students are assaulted and their property stolen or because the school's property is stolen or damaged. A more pernicious aspect of school crime, however, is that it reduces the effectiveness of public education, particularly in large cities.

Crime and the anticipation of crime in the past decade reduced teacher and student commitment to the educational process. Teach-

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ers in high-crime schools became less ready to demand from students in-class and out-of-class effort: Learning is work, and many teachers grew afraid to insist on what students regarded as unpleasant. They also became afraid to intervene when students fought or attacked another teacher. Some teachers found their role so different from what they had expected that they abandoned the teaching profession entirely or transferred to safer ("better") schools. Some older teachers chose to retire early. Most teachers—having invested too much in a professional career to quit—continued to serve, but with low morale. Students began to reject the educational process. They cut classes more than previous generations of students, and they took unauthorized absences of days and sometimes weeks. They complained that they weren't learning much in school—and they were right.

Those parents aware of the inadequate progress of their children in reading and arithmetic sometimes tried to correct the situation. For families with the economic resources to do so, the easiest way was to transfer their children to private or parochial schools or to move to suburban communities with reputations for good schools. Parents without the means to transfer their children could only attempt to make the local schools better, possibly by joining the PTA. But, in truth, parents could not have much impact, given the organizational and geographic isolation of the school from the local community.

The effect of this process of deterioration was to alter the role of the public school in underprivileged neighborhoods of big cities. American public schools have traditionally taught basic skills that all persons need to know in order to participate effectively in a complex industrial society. But they also served to select for post-secondary education youngsters whose native abilities and personal motivation prepared them for responsible and prestigious occupations. "Opportunity" was an incentive legitimizing the school in the eyes of the parents as well as students, and thereby justifying teacher authority. However, as crime grew more serious in big-city schools, they became less and less functional as a channel of social ascent for able students from disadvantaged backgrounds; they became traps instead of springboards. (The relentless support of the NAACP for busing to promote racial integration in public education should be understood against a background of disorder in big-city secondary schools that increasingly serve a minority clientele. Whatever else busing accomplishes, it promises to enroll minority students in safer and educationally more effective schools than they

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would otherwise attend and thus to return public education to its mobility-promoting function.)

Controlling violence in urban schools is thus not only desirable for its own sake, but also for the possibility of ameliorating two of the intractable problems of American education: 1) the draining away of better students and the consequent increase of racial segregation in the public schools of the largest central cities, and 2) educational ineffectiveness in those schools so serious as to prevent even intellectually able students from learning enough. To put the matter more dramatically, failure to control the violence problem in big-city schools means that urban public schools cannot propel youngsters from disadvantaged families toward successful occupational careers.

One way to avoid this conclusion is to assert that the causal order is not from violence to educational ineffectiveness to the flight from high-crime schools by better students, but rather that schools that arouse frustration and resentment in their students erupt in school crime. This is essentially the thesis of the Children's Defense Fund. According to the Fund, American schools are excessively arbitrary, especially with minority students, and suspend and expel students from school for trivial reasons unrelated to the educational process. The Children's Defense Fund refers to the "pushout problem" and argues that the disproportionate representation of black youngsters among those suspended or expelled is evidence at least of arbitrary standards and probably of racism on the part of school officials. The Fund's position is that schoolchildren need advocates to protect their legitimate interests against the oppressive authority of teachers and principals, and that more "due process" rather than less will reduce student frustration and therefore violence. Partisans of the youth-advocacy approach to crime reduction in the schools convinced the Senate Subcommittee to Investigate Juvenile Delinquency of the correctness of this approach. The Subcommittee's 1975 report, *Our Nation's Schools—A Report Card: "A" in School Violence and Vandalism,* put it this way:

> One common thread of particular interest to the Subcommittee running through many of the underlying causes of school violence and vandalism is what may be called the crisis of due process. Quite naturally schools, like other institutions, are compelled to issue rules and regulations concerning the conduct of persons within their jurisdiction. It is clear that without fair and meaningful control and discipline the schools would quickly lose their ability to educate students. Increasingly, though, educators and administrators are finding that the extent of stu-

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> dent conduct which is sought to be regulated, as well as the methods of regulation, are causing more problems than they are controlling. A 1975 NEA study interviewed a large number of students from different schools and found that "many students spoke of the need for consistent, fair discipline."
>
> For example, the Subcommittee found that in numerous institutions across the country, students, administrators and teachers are embroiled in constant ongoing disputes over restrictions on hair style, smoking, hall passes, student newspapers and a myriad of other aspects of school life.

According to the Senate Subcommittee, the schools' failings in the area of due process incite students to violence, as do arbitrary expulsions and suspensions. The Subcommittee Report made the connections as follows:

> At first glance it might appear that the expulsion, suspension, pushout, force out and truancy phenomenon [sic], although certainly tragic for those involved, might at least create a somewhat more orderly atmosphere for those remaining in school as a result of the absence of youngsters evidently experiencing problems adjusting to the school environment. The opposite, however, appears to be the case. The Syracuse study, for instance, found that in schools where the average daily attendance was lower, the disruptions, violence and vandalism rates were higher. This may be explained by the fact that the vast majority of students who are voluntarily or compulsively [sic] excluded from schools do, in time, return to those schools. In many instances their frustrations and inadequacies which caused their absence in the first place have only been heightened by their exclusion and the school community will likely find itself a convenient and meaningful object of revenge.

It is not possible to dismiss the arguments of the Children's Defense Fund, the Subcommittee on Juvenile Delinquency, and the various proponents of youth advocacy out of hand. Nonetheless, it seems more plausible that school violence lowers the effectiveness of the educational process through the fears that it arouses than that arbitrary school rules so enrage students that they rob and steal from each other and teachers, and perpetrate assaults and vandalism. Conceivably though, some students seek revenge on teachers, on the school building, and on their fellow students for perceived unjust treatment.

Violent-Schools—Safe-Schools asked students and teachers questions about their perception of the fairness of school rules; a scale of perceived school fairness was constructed. Did schools where students and teachers felt the rules were unfair have higher levels of violence than schools in which students and teachers

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thought the rules were fairer? Apparently not in the urban junior and senior high schools where the violence problem is most acute. The tendency for "less fair" schools to have higher violence rates virtually disappeared when other co-varying causal factors were statistically removed. Thus, in addition to being implausible, the hypothesis that student resentment of unfair rules contributes substantially to school violence did not stand up under empirical test.

How to reduce school crime

Reducing school crime requires a long-run strategy rather than a search for panaceas. Informal influences, such as greater parental involvement, might prove useful in controlling school crime. Informal social controls are a factor in human behavior generally—and certainly in adolescent behavior in schools. To fail to utilize informal controls is to throw the entire burden of preventing school crime on *formal* agencies of control: security guards, teachers, principals. But channeling informal influences is more complicated than hiring security guards or buying stronger locks. Time and effort must be devoted to developing practical programs.

Parents and other neighborhood adults are already employed in urban *elementary* schools as teacher aides; they are supposed to increase the effectiveness of classroom teachers. They may also contribute to a more orderly classroom atmosphere. But in *secondary* schools teacher aides are rare. (Paraprofessionals seem less useful for helping the teacher of specialized subjects.) If it could be arranged, the routine presence of parents in junior and senior high schools might have appreciable effects on crime rates and on the fear of crime, whether or not parents make a direct contribution to academic achievement.

But how can the presence of neighborhood adults in school buildings be justified? One possibility is to hire them to perform useful services that justify their being in lunchrooms, halls, stairways, offices, and even classrooms. Hiring parents for their indirect impact on school crime is expensive. And, indeed, the informal control resulting from a parental presence in secondary schools might be achieved more cheaply. Schools are already used for adult-education courses in evening hours. Such courses could be scheduled for the school day. If crime reduction were attained at the price of increased congestion and of reduced autonomy for teachers and principals, most people would consider the tradeoff worth it.

Greater efforts could be made to involve another informal influ-

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ence, the peer group, in the control of school crime. This has already been done, reportedly with success, in vandalism control. The cost of vandalism for a previous year is calculated, and the student body collectively is given the monetary equivalent of the reduction in property damage for the current year. There have also been efforts to heighten the consciousness of students about school crime through public discussions. Although these steps are in the right direction, they do not seem to mobilize strong peer sanctions against more serious crime. What is needed is sustained thought and experimentation to discover the most effective way to motivate students to disapprove of predatory behavior. Again, a long view is required.

But along with a long-term perspective for school-crime reduction there must be a set of priorities. For not even the federal government can deal with *all* school crime in *all* of the urban, suburban, and rural areas of 50 states and the District of Columbia. Some types of school crime, while undesirable, are not major threats to public education. Marijuana and alcohol use on school premises probably belong in this category; perhaps vandalism and after-hours burglaries are also bearable costs in an affluent society. On the other hand, violent crimes at school are serious threats to the viability of public education. Controlling them should be the first priority of a safe-schools strategy.

School violence is most serious in big-city junior high schools, where assaults and robberies are more than twice as frequent as in senior high schools. Furthermore, a major factor in junior-high-school crime is that junior highs are pressed to keep troublesome students because of compulsory-school-attendance laws. Expulsion is theoretically possible, but difficult in practice. A junior-high-school student who attacks a teacher may be given a five-day suspension, whereas a high school student committing the same offense would be expelled. High schools have greater proportions of voluntary students. True, some high school students are trapped by the school-attendance laws in the ninth or tenth grades, but they are outnumbered by students legally free to drop out—and therefore possible candidates for expulsion for misbehavior. These considerations explain why the problem of coping with school violence is more difficult in junior high schools than in other public secondary schools.

Can violence be controlled in big-city junior high schools? "Youth advocates" believe that designing more intriguing curricula and selecting more stimulating teachers will reduce violence. Yet no curriculum is universally intriguing, and no teacher can be stimulating all the time. Public schools may not be responsive enough to their

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clienteles, as proponents of youth advocacy allege, but responsiveness or lack of it is only marginally relevant to the problem of violence. Rural schools are the least responsive and the safest; some of them paddle students and conduct strip-searches for drugs. *What makes violence likely is weak control.* Big-city junior high schools have high rates of assault and robbery because they contain a handful of violent students whom they cannot control and cannot extrude, and because they have not devised credible rewards and punishments for the larger group of potentially violent youngsters who are susceptible to deterrence. Addressing these two weaknesses of control will enable big-city junior high schools to reduce violence. But coping with these weaknesses involves painful measures, not the cost-free "solutions" suggested by youth advocates.

First, to rid the junior high schools of the small percentage of violent students who have proved that they cannot be controlled by anyone, the public schools should be allowed to use expulsion more freely. This means recognizing that the limits to the right of students to remain in school for educational purposes are reached when their presence jeopardizes the education of classmates. Expulsion is a drastic remedy. Though home instruction and alternative schools will be available for expelled students, the likelihood is that expelled students will not make much further academic progress. That is sad. Nevertheless, society must be permitted to give up on students who are threatening the educational opportunities of their classmates.

Milder sanctions

The second remedy is linked to the first. It may be possible to devise innovative lesser punishments for misbehavior provided that more drastic punishments (such as expulsion) are available should the lesser sanctions fail. Suppose, for example, that a student subject to expulsion for slapping a teacher is offered the option of working 14 hours every weekend at the school—painting, scrubbing, polishing—for three months. Supervision is given by paid college students from the local community working alongside the offender. The offender receives no pay; he is being punished, not rewarded by participation in an employment program. Perhaps the assaultive student prefers expulsion to hard work on his "free" weekends. (Experience with coerced community service in New Zealand—called "periodic detention"—demonstrated that some offenders preferred jailing for a period of time to labor-punishment on the installment plan.) On the other hand, his parents may prefer that he remain in

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school; they press him to accept the weekend penalty and, reluctantly, he agrees. But what happens if he does not show up for his weekend drudgery? In New Zealand the failure to report for weekend work without a medical excuse results in a bench warrant being issued, and the youngster goes to jail. Were magistrates unwilling to issue bench warrants, periodic detention could not succeed; periodic detention is not a Quaker work project. In order for coerced community service to be effective as a sanction for controlling school crime, boards of education would have to expel youngsters who dropped out of the program.

The parallel is not exact. Expulsion from school may be perceived by offenders as not wholly undesirable. The New Zealand experience is with jail, not with expulsion from school. Only experimentation can show whether expulsion is a sufficient threat to motivate the majority of offenders to abide by a lesser penalty. If not, the cooperation of juvenile courts would be necessary. Since school violence is delinquency, and legally subject to the juvenile or criminal courts, judges can stand behind school-imposed disciplinary measures with the more drastic threat of incarceration. To be sure, mention of expulsion or incarceration in relation to school crime horrifies "youth advocates," and the hope, of course, would be that these fairly severe sanctions need rarely be used. Experimentation is necessary to find out whether the threat of such sanctions is sufficient to ensure compliance.

Experimentation is also necessary with more palatable forms of influencing student behavior: rewards for good behavior rather than punishment for bad. Psychologists say that "positive reinforcement" is more effective than punishment, and positive reinforcement does not involve denying some students educational opportunities in order to preserve educational opportunities for others. Unfortunately, it is difficult to hook all students on the rewards offered by principals, teachers, and conforming students. According to sociologists, the basic social reward is approval, but teachers cannot easily bestow approval upon students who are uninterested in the curriculum and flout the behavioral rules of the classroom. Furthermore, such students are likely to receive approval for their disruptive behavior from close friends and to weigh this approval against the disapproval of teachers, principals, and the majority of the student body. Consequently, as desirable as it is to search experimentally for rewards that will help control violent crime in big-city junior high schools, the likelihood is that punishments will also be necessary, and that to protect the educational process the penalties of expulsion

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and referral to the juvenile-justice system will have to be used for the foreseeable future.

Americans are not patient or fatalistic. Given a national problem as unpleasant as school violence, our tendency is to attempt to do something about it—fast. Unfortunately, a crash program may not ameliorate the situation; it may even make the problem worse. School violence has not triggered our usual activist response. There have been stories in the mass media, hearings in the Congress, studies by the Department of Health, Education, and Welfare, but surprisingly little in the way of systematic national effort to reduce school crime. Part of the reason that school violence has been handled gingerly is the American tradition of local control over education. The main role for the federal government has been to supply funds for school programs that the Congress and the President deem worthy. Another reason is the concentration of the problem in big cities—where it is entangled with other difficult problems. So far about all that has happened is that urban school districts have improved control over entry to and exit from school buildings and have stationed security guards in the schools. *Violent Schools—Safe Schools* summarized the situation:

> More than one-third of all big-city schools employ trained security personnel; more than half of the big-city junior high schools have them, as do two-thirds of all big-city senior high schools. In suburban areas the proportion is much lower (7 percent), and in rural schools their use is negligible (1 percent).

Meanwhile, other efforts at control illuminate ironic twists of "children's rights" in practice, as when big-city school systems attempt to move violent students from one school to another. The rationale for such transfers is that youngsters may start fresh in a new school where they do not have a bad reputation. But the case study of one inner-city junior high school, called "Rogers" in the report, shows how this system of musical chairs works in practice:

> Since it is not legally possible to expel students considered disruptive, it is customary at Rogers as in other schools, to transfer students to other schools. By board regulation, the school is not permitted to inform the receiving school of the reason for the transfer or to provide any disciplinary records. "This can present some real problems," the dean says of the confidentiality requirement: "We had a kid last year who slashed another kid's throat with a razor blade and we finally had to transfer him to one of the intermediate schools, but we couldn't tell them officially what he had done or even that they should keep an eye on him because he was potentially violent."

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No one knows whether transferring violent students from school to school reduces the total amount of violence in big-city school systems. Yet in any case humane considerations suggest that after a student has committed violent acts against students or teachers in a school, they ought not to have to encounter him in the corridors day after day. (In point of fact, it is at least as common for victims—both teachers and students—to transfer out voluntarily as it is for perpetrators to be compelled to transfer.)

What is being done?

On August 30, 1978, the Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration announced in the *Federal Register* a national initiative to combat school crime. Proposals were invited for a National School Resource Network; one grant of as much as $2,500,000 would be made for an initial 15-month period to finance the successful proposal. The presumption was that further grants would be made to maintain the School Resource Network if it seemed promising. Here is how the solicitation justified the new initiative:

> At the present time, there is no overall or resource strategy to assist schools in meeting the challenge of serious school crime. Resources are minimal and fragmented with little capacity to develop new resources to meet this challenge. The development of a nationwide school resource network dedicated to systematic advocacy, reform, and a safer environment on behalf of students and teachers is needed to provide overall direction and coordination of existing and new school resources. The promotion of due process, fairness and consistency in school security, and disciplinary policies and practices is important in assisting schools to develop and operate crime prevention and control programs.

The words have a pleasant sound, but it was not obvious what the School Resource Network was supposed to do. Later in the solicitation, the strategy of John M. Rector, then Administrator of the Office of Juvenile Justice and Delinquency Prevention, became clearer. Rector's approach was to move information from schools that had learned to cope with crime to schools that had not. Rector explained in a paragraph included under the heading, "technical assistance":

> The grantee shall produce technical assistance packages containing a variety of information materials on serious school violence and vandalism prevention. Sufficient copies of each package shall be produced to allow dissemination to appropriate technical assistance specialists in the national school resource network system. The information materials

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> to be included in each package shall include, but not be limited to, the Office of Juvenile Justice and Delinquency Prevention publications and materials such as the national evaluation reports, model school crime prevention programs and research reports, abstracts, bibliographies, grant project summaries, brochures, directories, and pamphlets. Materials developed and compiled should take into account regional, local and ethnic minority differences.

The dissemination of information about school violence will be helpful. But in order for improved communication to serve as the cornerstone of a national strategy for the control of school violence, some schools must be markedly more successful at coping with school violence than others. All that would then be necessary is to package the secret and send it around the country. But if, as is true especially in the inner cities, all schools are groping more or less ineffectively, a national strategy for coping with school crime should stress the systematic search for new approaches.[2]

The National School Resource Network is currently the main effort of the federal government, and local school systems are planning no new initiatives of their own. Nevertheless, school violence may diminish somewhat. The decline of births that began in the 1960's is likely to help. Junior-high-school enrollments have begun to fall. With smaller numbers of students, teachers and security guards are better able to defuse potentially explosive situations. Furthermore, teachers and principals have learned from their difficult experiences of the past decade; they know what to expect. They are less likely to become demoralized than the missionary-teachers who streamed into big-city schools in the 1960's—and streamed out again when they discovered that the role required less a guru than a policeman. Waiting passively for school violence to go away means relying on the happenstance of demography and other natural forces to cope with the problem. There is another possibility: that parents will become indignant enough about violent schools to make safer schools a political issue. Let's hope so.

[2] The failure of Mr. Rector's solicitation to include a research-and-development component was partly personal idiosyncracy. A lawyer by training, Rector was doubtful that social-science research could demonstrate the usefulness of an approach that practitioners were not already using—*somewhere*. This prejudice forced the School Resource Network to rely on what little was known about the control of school violence; Rector's strategy was to get the pamphlets in the mail. Rector was dismissed as Administrator in June 1979. Whether his successor will try to extricate the National School Resource Network from its presently-designed role is not yet known.

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Torture and plea bargaining

JOHN H. LANGBEIN

THE American system of plea bargaining is becoming a subject of immense academic and public attention. A dozen books have appeared in the last year or so describing plea bargaining as observed in one forum or another. The law reviews are full of writing about the details; a special issue of the *Law and Society Review* is now offering 20 more articles. The general theme of much of the current writing is that although, arguably, plea bargaining might be in need of various operational reforms, the basic institution is natural, inevitable, universal, and just.

In this essay I shall set forth some of the case against plea bargaining from a perspective that must appear bizarre, although I hope to show that it is illuminating. I am going to contrast the modern American system of plea bargaining with the medieval European law of torture. My thesis is that there are remarkable parallels in origin, in function, and even in specific points of doctrine, between the law of torture and the law of plea bargaining. I shall suggest that these parallels expose some important truths about how criminal justice systems respond when their trial procedures fall into deep disorder.

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The law of torture

For about half a millennium, from the middle of the thirteenth century to the middle of the eighteenth, a system of judicial torture lay at the heart of Continental criminal procedure. In our own day the very word "torture" is, gladly enough, a debased term. It has come to mean anything unpleasant, and we hear people speak of a tortured interpretation of a poem, or the torture of a dull dinner party. In discussions of contemporary criminal procedure we hear the word applied to describe illegal police practices or crowded prison conditions. But torture as the medieval European lawyers understood it had nothing to do with official misconduct or with criminal sanctions. Rather, the application of torture was a routine and judicially supervised feature of European criminal procedure. Under certain circumstances the law permitted the criminal courts to employ physical coercion against suspected criminals in order to induce them to confess. The law went to great lengths to limit this technique of extorting confessions to cases in which it was thought that the accused was highly likely to be guilty, and to surround the use of torture with other procedural safeguards that I shall discuss shortly.

This astonishing body of law grew up on the Continent as an adjunct to the law of proof—what we would call the system of trial—in cases of serious crime (for which the sanction was either death or severe physical maiming). The medieval law of proof was designed in the thirteenth century to replace an earlier system of proof, the ordeals, which the Roman Church effectively destroyed in the year 1215. The ordeals purported to achieve absolute certainty in criminal adjudication through the happy expedient of having the judgments rendered by God, who could not err. The replacement system of the thirteenth century aspired to achieve the same level of safeguard—absolute certainty—for human adjudication.

Although human judges were to replace God in the judgment seat, they would be governed by a law of proof so objective that it would make that dramatic substitution unobjectionable—a law of proof that would *eliminate human discretion* from the determination of guilt or innocence. Accordingly, the Italian Glossators who designed the system developed and entrenched the rule that conviction had to be based upon the testimony of two unimpeachable eyewitnesses to the gravamen of the crime—evidence that was, in the famous phrase, "clear as the noonday sun." Without these two eyewitnesses, a criminal court could not convict an accused who contested the charges against him. Only if the accused *voluntarily*

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confessed the offense could the court convict him without the eyewitness testimony.

Another way to appreciate the purpose of these rules is to understand their corollary: Conviction could not be based upon circumstantial evidence, because circumstantial evidence depends for its efficacy upon the subjective persuasion of the trier who decides whether to draw the inference of guilt from the evidence of circumstance. Thus, for example, it would not have mattered in this system that the suspect was seen running away from the murdered man's house and that the bloody dagger and the stolen loot were found in his possession. If no eyewitness saw him actually plunge the weapon into the victim, the court could not convict him.

In the history of Western culture no legal system has ever made a more valiant effort to perfect its safeguards and thereby to exclude completely the possibility of mistaken conviction. But the Europeans learned in due course the inevitable lesson. They had set the level of safeguard too high. They had constructed a system of proof that could as a practical matter be effective only in cases involving overt crime or repentant criminals. Because society cannot long tolerate a legal system that lacks the capacity to convict unrepentant persons who commit clandestine crimes, something had to be done to extend the system to those cases. The two-eyewitness rule was hard to compromise or evade, but the confession rule seemed to invite the subterfuge that in fact resulted. To go from accepting a voluntary confession to coercing a confession from someone against whom there was already strong suspicion was a step that began increasingly to be taken. The law of torture grew up to regulate this process of generating confessions.

The spirit of safeguard that had inspired the unworkable formal law of proof also permeated the subterfuge. The largest chapter of the European law of torture concerned the prerequisites for examination under torture. The European jurists devised what Anglo-American lawyers would today call a rule of probable cause, designed to assure that only persons highly likely to be guilty would be examined under torture. Thus, torture was permitted only when a so-called "half proof" had been established against the suspect. That meant either one eyewitness, or circumstantial evidence of sufficient gravity, according to a fairly elaborate tariff. In the example where a suspect was caught with the dagger and the loot, each of those indicia would be a quarter proof. Together they cumulated to a half proof, which was sufficient to permit the authorities to dispatch the suspect for a session in the local torture chamber.

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In this way the prohibition against using circumstantial evidence was overcome. The law of torture found a place for circumstantial evidence, but a nominally subsidiary place. Circumstantial evidence was not consulted directly on the ultimate question, guilt or innocence, but on a question of interlocutory procedure—whether or not to examine the accused under torture. Even there the law attempted to limit judicial discretion by promulgating predetermined, ostensibly objective criteria for evaluating the indicia and assigning them numerical values (quarter proofs, half proofs, and the like). Vast legal treatises were compiled on this jurisprudence of torture to guide the examining magistrate in determining whether there was probable cause for torture.

In order to achieve a verbal or technical reconciliation with the requirement of the formal law of proof that the confession be voluntary, the medieval lawyers treated a confession extracted under torture as involuntary, hence ineffective, unless the accused repeated it free from torture at a hearing that was held a day or so later. Often enough the accused who had confessed under torture did recant when asked to confirm his confession. But seldom to avail: The examination under torture could thereupon be repeated. An accused who confessed under torture, recanted, and then found himself tortured anew, learned quickly enough that only a "voluntary" confession at the ratification hearing would save him from further agony in the torture chamber.

Fortunately, more substantial safeguards were devised to govern the actual application of torture. These were rules designed to enhance the reliability of the resulting confession. Torture was not supposed to be used to elicit an abject, unsubstantiated confession of guilt. Rather, torture was supposed to be employed in such a way that the accused would disclose the factual detail of the crime—information which, in the words of a celebrated German statute of the year 1532, "no innocent person can know." The examining magistrate was forbidden to engage in so-called suggestive questioning, in which the examiner supplied the accused with the detail he wanted to hear from him. Moreover, the information admitted under torture was supposed to be investigated and verified to the extent feasible. If the accused confessed to the slaying, he was supposed to be asked where he put the dagger. If he said he buried it under the old oak tree, the magistrate was supposed to send someone to dig it up.

Alas, these safeguards never proved adequate to overcome the basic flaw in the system. Because torture tests the capacity of the

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accused to endure pain, rather than his veracity, the innocent might (as one sixteenth-century commentator put it) yield to "the pain and torment and confess things that they never did." If the examining magistrate engaged in suggestive questioning, even accidentally, his lapse could not always be detected or prevented. If the accused knew something about the crime, but was still innocent of it, what he did know might be enough to give his confession verisimilitude. In some jurisdictions the requirement of verification was not enforced, or was enforced indifferently.

These shortcomings in the law of torture were identified even in the Middle Ages and were the subject of emphatic complaint in Renaissance and early modern times. The Europeans looked ever more admiringly at England, where the jury system—operating without the two-eyewitness rule—had never needed the law of torture. In the eighteenth century, as the law of torture was finally about to be abolished along with the system of proof that had required it, Beccaria and Voltaire became famous as critics of judicial torture; but they were latecomers to a critical legal literature nearly as old as the law of torture itself. Judicial torture survived the centuries not because its defects had been concealed, but in spite of their having been long revealed. The two-eyewitness rule had left European criminal procedure without a tolerable alternative. Having entrenched this unattainable level of safeguard in their formal trial procedure, the Europeans found themselves obliged to evade it through a subterfuge that they knew was defective. The coerced confession had to replace proof of guilt.

The law of plea bargaining

I am now going to cross the centuries and cross the Atlantic in order to speak of the rise of plea bargaining in twentieth-century America. The account of the European law of torture that I have just presented (which is based upon my monograph *Torture and the Law of Proof*, 1977), should stir among American readers an unpleasant sensation of the familiar, for the parallels between our modern plea bargaining system and the ancient system of judicial torture are many and chilling.

Let us begin by recollecting the rudiments of the American system of plea bargaining in cases of serious crime. Plea bargaining occurs when the prosecutor induces an accused criminal to confess guilt and to waive his right to trial in exchange for a more lenient criminal sanction than would be imposed if the accused were adju-

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dicated guilty following trial. The prosecutor offers leniency either directly, in the form of a charge reduction, or indirectly, through the connivance of the judge, in the form of a recommendation for reduced sentence that the judge will follow. In exchange for procuring this leniency for the accused, the prosecutor is relieved of the need to prove the accused's guilt, and the court is spared having to adjudicate it. The court condemns the accused on the basis of his confession, without independent adjudication.

Plea bargaining is, therefore, a nontrial procedure for convicting and condemning the accused criminal. If you turn to the American Constitution in search of authority for plea bargaining, you will look in vain. Instead, you will find—in no less hallowed a place than the Bill of Rights—an opposite guarantee, a guarantee of trial. The Sixth Amendment provides: "In *all* criminal prosecutions, the accused shall enjoy the right to . . . trial . . . by an impartial jury . . ." (emphasis added).

In our day, jury trial continues to occupy its central place both in the formal law and in the mythology of the law. The Constitution has not changed, the courts pretend to enforce the defendant's right to jury trial, and television transmits a steady flow of dramas in which a courtroom contest for the verdict of the jury leads inexorably to the disclosure of the true culprit. In truth, criminal jury trial has largely disappeared in America. The criminal justice system now disposes of virtually all cases of serious crime through plea bargaining. In the major cities between 95 and 99 percent of felony convictions are by plea. This nontrial procedure has become the ordinary dispositive procedure of American law.

Why has our formal system of proof been set out of force and this nontrial system substituted for the trial procedure envisaged by the Framers? Scholars are only beginning to investigate the history of plea bargaining, but enough is known to permit us to speak with some confidence about the broad outline. In the two centuries from the mid-eighteenth to the mid-twentieth, a vast transformation overcame the Anglo-American institution of criminal jury trial, rendering it absolutely unworkable as an ordinary dispositive procedure and requiring the development of an alternative procedure, which we now recognize to be the plea bargaining system.

In eighteenth-century England jury trial was still a *summary proceeding*. In the Old Bailey in the 1730's we know that the court routinely processed between 12 and 20 jury trials for felony in a single day. A single jury would be impaneled and would hear evidence in numerous unrelated cases before retiring to formulate

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verdicts in all. Lawyers were not employed in the conduct of ordinary criminal trials, either for the prosecution or the defense. The trial judge called the witnesses (whom the local justice of the peace had bound over to appear), and the proceeding transpired as a relatively unstructured altercation between the witnesses and the accused. Plea bargaining was unknown—indeed, judges actively discouraged pleas of guilty even from defendants who tendered them voluntarily and without hope of sentencing concessions. In the 1790's, when the Americans were constitutionalizing English jury trial, it was still rapid and efficient. The trial of Hardy for high treason in 1794 was the first that ever lasted more than one day, and the court seriously considered whether it had any power to adjourn. By contrast, we may note that the trial of Patricia Hearst for bank robbery in 1976 lasted 40 days and that the average felony jury trial in Los Angeles in 1968 required 7.2 days of trial time. In the eighteenth century the most characteristic (and time-consuming) features of modern jury trial, namely adversary procedure and the exclusionary rules of the law of criminal evidence, were still primitive and uncharacteristic. The accused's right to representation by retained counsel was not generalized to all felonies until the end of the eighteenth century in America and the nineteenth century in England. Appellate review was very restricted into the twentieth century; counsel for indigent accused was not required until the middle of this century. The practices that so protract modern American jury trials—extended *voir dire* (pretrial probing of the views and backgrounds of individual jurors for juror challenges), exclusionary rules and other evidentiary barriers, motions designed to provoke and preserve issues for appeal, maneuvers and speeches of counsel, intricate and often incomprehensible instructions to the jury—all are late growths in the long history of common-law criminal procedure. No wonder, then, that plea bargaining appears to have been a late-nineteenth-century growth that was scarcely acknowledged to exist in the United States before the 1920's. (The English are only now facing up to the fact of their dependence on plea bargaining.)

Nobody should be surprised that jury trial has undergone great changes over the last two centuries. It desperately needed reform. The level of safeguard against mistaken conviction was in several respects below what civilized peoples now require. What we will not understand until there has been research directed to the question, is why the pressure for greater safeguards led in the Anglo-American procedure to the law of evidence and the lawyerization

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of the trial, reforms that ultimately destroyed the system in the sense that they made jury trial so complicated and time-consuming as to be unworkable as the routine dispositive procedure.

Similar pressures for safeguards were being felt on the Continent in the same period, but they led to reforms in nonadversarial procedure that preserved the institution of trial. In the middle of the nineteenth century, when Continental criminal procedure was being given its modern shape, the draftsmen of the European codes routinely studied Anglo-American procedure as a reform model. They found much to admire and to borrow, but they resisted the temptation to adversary domination. Their experience with the way that their medieval rules of evidence had led to the law of torture also left them unwilling to imitate the nascent Anglo-American law of evidence. And they were unanimous in rejecting the institution of the guilty plea. As early as the 1850's German writers were saying that it was wrong for a court to sentence an accused on mere confession, without satisfying itself of his guilt.

Parallels to the law of torture

Let me now turn to my main theme—the parallels in function and doctrine between the medieval European system of judicial torture and our plea bargaining system. The starting point, which will be obvious from what I have thus far said, is that each of these substitute procedural systems arose in response to the breakdown of the formal system of trial that it subverted. Both the medieval European law of proof and the modern Anglo-American law of jury trial set out to safeguard the accused by circumscribing the discretion of the trier in criminal adjudication. The medieval Europeans were trying to eliminate the discretion of the professional judge by requiring him to adhere to objective criteria of proof. The Anglo-American trial system has been caught up over the last two centuries in an effort to protect the accused against the dangers of the jury system, in which laymen ignorant of the law return a one- or two-word verdict that they do not explain or justify. Each system found itself unable to recant directly on the unrealistic level of safeguard to which it had committed itself, and each then concentrated on inducing the accused to tender a confession that would waive his right to the safeguards.

The European law of torture preserved the medieval law of proof undisturbed for those easy cases in which there were two eyewitnesses or voluntary confession. But in the more difficult cases

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(where, I might add, safeguard was more important), the law of torture worked an absolutely fundamental change within the system of proof: It largely *eliminated the adjudicative function.* Once probable cause had been determined, the accused was made to concede his guilt rather than his accusers to prove it.

In twentieth-century America we have duplicated the central experience of medieval European criminal procedure. We have moved from an adjudicatory to a concessionary system. We coerce the accused against whom we find probable cause to confess his guilt. To be sure, our means are much more polite; we use no rack, no thumbscrew, no Spanish boot to mash his legs. But like the Europeans of distant centuries who did employ those machines, we make it terribly costly for an accused to claim his right to the constitutional safeguard of trial. We threaten him with a materially increased sanction if he avails himself of his right and is thereafter convicted. This sentencing differential is what makes plea bargaining coercive. There is, of course, a difference between having your limbs crushed if you refuse to confess, or suffering some extra years of imprisonment if you refuse to confess, but the difference is of degree, not kind. Plea bargaining, like torture, is coercive. Like the medieval Europeans, the Americans are now operating a procedural system that engages in condemnation without adjudication. The maxim of the medieval Glossators, no longer applicable to European law, now aptly describes American law: *Confessio est regina probationum,* confession is the queen of proof.

Supporters of plea bargaining typically maintain that a "mere" sentencing differential is not sufficiently coercive to pressure an innocent accused to convict himself. That point can be tested in the abstract simply by imagining a differential so great—for example, death versus a 50-cent fine—that any rational defendant would waive even the strongest defenses. The question of whether significant numbers of innocent people do plead guilty is not, of course, susceptible to empirical testing. It has been established that many of those who plead guilty claim that they are innocent. More importantly, prosecutors widely admit to bargaining hardest when the case is weakest, which is why the leading article on the subject, by Albert Alschuler ("The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review, 1968), concluded that "the greatest pressures to plead guilty are brought to bear on defendants who may be innocent." Alschuler recounted one such case:

> San Francisco defense attorney Benjamin M. Davis recently represented a man charged with kidnapping and forcible rape. The defendant

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> was innocent, Davis says, and after investigating the case Davis was confident of an acquittal. The prosecutor, who seems to have shared the defense attorney's opinion on this point, offered to permit a guilty plea to simple battery. Conviction on this charge would not have led to a greater sentence than 30 days' imprisonment, and there was every likelihood that the defendant would be granted probation. When Davis informed his client of this offer, he emphasized that conviction at trial seemed highly improbable. The defendant's reply was simple: "I can't take the chance."

I do not think that great numbers of Americans plead guilty to offenses committed by strangers. (The European law of torture was also not supposed to apply in the easy cases where the accused could forthrightly explain away the evidence that might otherwise have given cause to examine him under torture.) I do believe that plea bargaining is used to coerce the waiver of tenable defenses, as in attorney Davis's example, and in cases where the offense has a complicated conceptual basis, as in tax and other white-collar crimes. Like the medieval law of torture, the sentencing differential in plea bargaining elicits confessions of guilt that would not be freely tendered, and some of the confessions are false. Plea bargaining is therefore coercive in the same sense as torture, although surely not in the same degree.

I do not mean to say that excesses of the plea bargaining system affect only the innocent who is coerced to plead guilty or the convict whose sentence is made more severe because he insisted on his right to trial. In other circumstances plea bargaining has been practiced in ways that result in unjustified leniency. Many observers have been struck by the extent of the concessions that prosecutors have been prepared to make in serious criminal cases in order to avoid having to go to trial. One Alaskan prosecutor told Alschuler in 1976 that "prosecutors can get rid of everything if they just go low enough. The police complained that we were giving cases away, and they were right."

I have said that European law attempted to devise safeguards for the use of torture that proved illusory; these measures bear an eerie resemblance to the supposed safeguards of the American law of plea bargaining. Foremost among the illusory safeguards of both systems is the doctrinal preoccupation with characterizing the induced waivers as voluntary. The Europeans made the torture victim repeat his confession "voluntarily," but under the threat of being tortured anew if he recanted. The American counterpart is Rule 11(d) of the Federal Rules of Criminal Procedure, which forbids the court from accepting a guilty plea without first "addressing the

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defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises *apart from a plea agreement.*" Of course, the plea agreement is the *source* of the coercion and already embodies the involuntariness.

The architects of the European law of torture sought to enhance the reliability of a torture-induced confession with other safeguards designed to substantiate its factual basis. We have said that they required a probable-cause determination for investigation under torture and that they directed the court to take steps to verify the accuracy of the confession by investigating some of its detail. We have explained why these measures were inadequate to protect many innocent suspects from torture, confession, and condemnation. Probable cause is not the same as guilt, and verification, even if undertaken in good faith, could easily fail as a safeguard, either because the matters confessed were not susceptible of physical or testimonial corroboration, or because the accused might know enough about the crime to lend verisimilitude to his confession even though he was not in fact the culprit.

The American law of plea bargaining has pursued a similar chimera: the requirement of "adequate factual basis for the plea." Federal Rule 11(f) provides that "the court should not enter judgment upon [a guilty] plea without making such inquiry as shall satisfy it that there is a factual basis for the plea." As with the tortured confession, so with the negotiated plea: Any case that has resisted dismissal for want of probable cause at the preliminary hearing will rest upon enough inculpating evidence to cast suspicion upon the accused. The function of trial, which plea bargaining eliminates, is to require the court to adjudicate whether the facts proven support an inference of guilt beyond a reasonable doubt. Consider, however, the case of *North Carolina v. Alford,* decided in this decade, in which the U.S. Supreme Court found it permissible to condemn without trial a defendant who had told the sentencing court: "I pleaded guilty on second degree murder because they said there is too much evidence, but I ain't shot no man. . . . I just pleaded guilty because they said if I didn't they would gas me for it. . . . I'm not guilty but I plead guilty." I invite you to compare Alford's statement with the explanation of one Johannes Julius, seventeenth-century burgomaster of Bamberg, who wrote from his dungeon cell where he was awaiting execution, in order to tell his daughter why he had confessed to witchcraft "for which I must die. It is all falsehood and invention, so help me God. . . . They never cease to torture until one says something."

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The tortured confession is, of course, markedly less reliable than the negotiated plea, because the degree of coercion is greater. An accused is more likely to bear false witness against himself in order to escape further hours on the rack than to avoid risking a longer prison term. But the resulting moral quandary is the same. Judge Levin of Michigan was speaking of the negotiated guilty plea, but he could as well have been describing the tortured confession when he said, "there is no way of knowing whether a particular guilty plea was given because the accused believed he was guilty, or because of the promised concession." Beccaria might as well have been speaking of the coercion of plea bargaining when he said of the violence of torture that it "confounds and obliterates those minute differences between things which enable us at times to know truth from falsehood." The doctrine of adequate factual basis for the plea is no better substitute for proof beyond reasonable doubt than was the analogous doctrine in the law of torture.

The factual unreliability of the negotiated plea has further consequences, quite apart from the increased danger of condemning an innocent man. In the plea bargaining that takes the form of charge bargaining (as opposed to sentence bargaining), the culprit is convicted not for what he did, but for something less opprobrious. When people who have murdered are said to be convicted of wounding, or when those caught stealing are nominally convicted of attempt or possession, cynicism about the processes of criminal justice is inevitably reinforced. This willful mislabelling plays havoc with our crime statistics, which explains in part why Americans—uniquely among Western peoples—attach so much importance to arrest records rather than to records of conviction. I think that the unreliability of the plea, the mislabelling of the offense, and the underlying want of adjudication all combine to weaken the moral force of the criminal law, and to increase the public's unease about the administration of criminal justice. The case of James Earl Ray is perhaps the best example of public dissatisfaction over the intrinsic failure of the plea bargaining system to establish the facts about crime and guilt in the forum of a public trial. Of course, not every trial resolves the question of guilt or innocence to public satisfaction. The Sacco-Vanzetti and Rosenberg cases continue to be relitigated in the forum of popular opinion. But plea bargaining leaves the public with what I believe to be a more pronounced sense of unease about the justness of results, because it avoids the open ventilation and critical evaluation of evidence that characterize public trial. (Just this concern appears to have motivated the gov-

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ernment in the plea-bargained bribery case of Vice President Agnew to take extraordinary steps to assure the disclosure of the substance of the prosecution case.) It is interesting to remember that in Europe in the age of Beccaria and Voltaire, the want of adjudication and the unreliability of the law of torture had bred a strangely similar cynicism towards the criminal justice system of that day.

The moral blunder

Because plea bargaining involves condemnation without adjudication, it undermines a moral postulate of the criminal justice system so basic and elementary that in past centuries Anglo-American writers seldom bothered to express it: Serious criminal sanctions should only be imposed when the trier has examined the relevant evidence and found the accused guilty beyond reasonable doubt.

Why have we been able to construct a nontrial procedure that is irreconcilable with this fundamental proposition? A major reason is that we have been beguiled by the similarities between civil and criminal litigation in our lawyer-dominated procedural system. "What's wrong with settling cases?" the argument runs. "Surely society is correct not to insist on full-scale adjudication of every private grievance. If the parties are satisfied with their deal, there is no social interest in adjudication. Likewise in criminal adjudication: If the prosecutor and the accused can reach agreement about the sanction, hasn't the matter been satisfactorily concluded?"

The answer is that because the social interest in criminal adjudication differs importantly from that in civil cases, the deeply embedded policy in favor of negotiated (nontrial) settlement of civil disputes is misapplied when transposed to the criminal setting. There is good reason for treating adjudication as the norm in the criminal law, but as a last and exceptional resort in private law. Kenneth Kipnis has provided a wry illustration of the distinction with an example drawn from neither. Kipnis asks us to imagine a system of "grade bargaining," in which the teacher would offer a student a favorable grade in exchange for a waiver of the student's right to have the teacher read his examination paper. The teacher would save time, thus conserve his resources, and the student would not accept the teacher's grade offer unless he calculated it to be in his interest by comparison with his expected results from conventional grading.

We see instantly what is wrong with grade bargaining. Because third parties rely upon grades in admissions and hiring decisions,

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the grade bargain would adversely affect the legitimate interests of these outsiders. And because the grade is meant to inform the student about the teacher's perception of the comparative quality of his performance, the grade bargain would disserve the larger interests of the student.

Quite analogous objections apply to plea bargaining. Criminal sanctions are imposed for public purposes: certainly in order to deter future crime, probably still with the object of reforming at least some offenders, and perhaps still in the interest of retribution. Sentences that satisfy the accused's wish to minimize the sanction and the prosecutor's need to reduce his trial caseload are arrived at with only passing attention to these social interests. In particular, the enormous sentence differential needed to sustain the plea bargaining system is repugnant to any tenable theory of sentencing. We can scarcely claim to be tailoring the sentence to the crime when one of the largest aggravating factors we consult is whether the accused had the temerity to ask for his right to trial. The truth is that when an accused is convicted following jury trial, we customarily punish him twice: once for the crime, and then more severely for what the Constitution calls "enjoy[ing] the right to . . . trial . . . by an impartial jury."

Twenty years ago in a celebrated article the late Henry Hart compared so-called "civil commitment" for mental or contagious disease with imprisonment for criminal conviction. Many a prison is more pleasant than a nearby asylum. Why, then, do we treat the decision to imprison as the more serious and surround it with safeguards that, at least in theory, are more substantial than those for the civil-commitment process? Notwithstanding the operational similarity between civil and criminal sanctions, said Hart, there is a profound difference in purpose. "The core of the difference is that the patient has not incurred the moral condemnation of his community, whereas the convict has." The very stigma of criminal conviction is the source of much of the deterrent and retributive power of the criminal sanction. I believe that this moral force of the criminal sanction is partially dependent on the sanction having been imposed after rational inquiry and decision on the facts. Adjudication alone legitimates the infliction of serious criminal sanctions, because it alone is adequate to separate the innocent from the guilty and to establish the basis for proportioning punishment to the degree of culpability. To assert (as a defender of plea bargaining must) the equivalency of waiver and of adjudication is to overlook the distinctive characteristic of the criminal law.

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The prosecutor

Our law of plea bargaining has not only recapitulated much of the doctrinal folly of the law of torture, complete with the pathetic safeguards of voluntariness and factual basis, but it has also repeated the main institutional blunder of the law of torture. Plea bargaining concentrates effective control of criminal procedure in the hands of a single officer. Our formal law of trial envisages a division of responsibility. We expect the prosecutor to make the charging decision, the judge and especially the jury to adjudicate, and the judge to set the sentence. Plea bargaining merges these accusatory, determinative, and sanctional phases of the procedure in the hands of the prosecutor. Students of the history of the law of torture are reminded that the great psychological fallacy of the European inquisitorial procedure of that time was that it concentrated in the investigating magistrate the powers of accusation, investigation, torture, and condemnation. The single inquisitor who wielded those powers needed to have what one recent historian has called "superhuman capabilities [in order to] . . . keep himself in his decisional function free from the predisposing influences of his own instigating and investigating activity."

The dominant version of American plea bargaining makes similar demands: It requires the prosecutor to usurp the determinative and sentencing functions, hence to make himself judge in his own cause. There are dangers in this concentration of prosecutorial power. One need not necessarily accept Jimmy Hoffa's view that Robert Kennedy was conducting a personal and political vendetta against him in order to appreciate the danger that he might have been. The power to prosecute as we know it carries within itself the power to persecute. The modern public prosecutor commands the vast resources of the state for gathering and generating accusing evidence. We allowed him this power in large part because the criminal trial interposed the safeguard of adjudication against the danger that he might bring those resources to bear against an innocent citizen —whether on account of honest error, arbitrariness, or worse. But the plea bargaining system has largely dissolved that safeguard.

While on the subject of institutional factors, I have one last comparison to advance. The point has been made, most recently by the Attorney General of Alaska, that preparing and taking cases to trial is much harder work than plea bargaining—for police, prosecutors, judges, and defense counsel. In short, convenience—or worse, sloth —is a factor that sustains plea bargaining. We suppose that this factor had a little to do with torture as well. As somone in India re-

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marked to Sir James Fitzjames Stephen in 1872 about the proclivity of the native policemen for torturing suspects, "It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence." If we were to generalize about this point, we might say that concessionary criminal-procedural systems like the plea bargaining system and the system of judicial torture may develop their own bureaucracies and constituencies. Here as elsewhere the old adage may apply that if necessity is the mother of invention, laziness is the father.

The jurisprudence of concession

Having developed these parallels between torture and plea bargaining, I want to draw some conclusions about what I regard as the lessons of the exercise. The most important is this: A legal system will do almost anything, tolerate almost anything, before it will admit the need for reform in its system of proof and trial. The law of torture endured for half a millennium although its dangers and defects had been understood virtually from the outset; and plea bargaining lives on although its evils are quite familiar to us all. What makes such shoddy subterfuges so tenacious is that they shield their legal systems from having to face up to the fact of breakdown in the formal law of proof and trial.

Why is it so hard for a legal system to reform a decadent system of proof? I think that there are two main reasons, one in a sense practical, the other ideological. From the standpoint of the practical, nothing seems quite so embedded in a legal system as the procedures for proof and trial, because most of what a legal system does is to decide matters of proof—what we call "fact finding." (Was the traffic light green or red? Was this accused the man who fired the shot or robbed the bank?) Blackstone emphasized this point in speaking of civil litigation, and it is even more true of criminal litigation. He said: "Experience will abundantly shew, that above a hundred of our lawsuits arise from disputed facts, for one where the law is doubted of." Every institution of the legal system is geared to the system of proof; forthright reconstruction would disturb, at one level or another, virtually every vested interest.

The inertia, the resistance to change that is associated with such deep-seated interests, is inevitably reinforced by the powerful ideological component that underlies a system of proof and trial. Adjudication, especially criminal adjudication, involves a profound intrusion into the lives of affected citizens. Consequently, in any

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society the adjudicative power must be rested on a theoretical basis that makes it palatable to the populace. Because the theory of proof purports to govern and explain the application of the adjudicative power, it plays a central role in legitimating the entire legal system. The medieval European law of proof assured people that the legal system would achieve certainty. The Anglo-American jury system invoked the inscrutable wisdom of the folk to justify its results. Each of these theories was ultimately untenable—the European theory virtually from its inception, the Anglo-American theory after a centuries-long transformation of jury procedure. Yet the ideological importance of these theories prevented either legal system from recanting them. For example, I have elsewhere pointed out how in the nineteenth century the ideological attachment to the jury retarded experimentation with juryless trial—that is, what we now call bench trial—while the plea bargaining system of juryless nontrial procedure was taking shape out of public sight. Like the medieval European lawyers before us, we have been unable to admit that our theory of proof has resulted in a level of procedural complexity and safeguard that renders our trial procedure unworkable in all but exceptional cases. We have responded to the breakdown of our formal system of proof by taking steps to perpetuate the ideology of the failed system, steps that closely resemble those taken by the architects of the law of torture. *Like the medieval Europeans, we have preserved an unworkable trial procedure in form, we have devised a substitute nontrial procedure to subvert the formal procedure, and we have arranged to place defendants under fierce pressure to "choose" the substitute.*

That this script could have been played out in a pair of legal cultures so remote from each other in time and place invites some suggestions about the adaptive processes of criminal procedural systems. First, there are intrinsic limits to the level of complexity and safeguard that even a civilized people can tolerate. If those limits are exceeded and the repressive capacity of the criminal justice system is thereby endangered, the system will respond by developing subterfuges that overcome the formal law. But subterfuges are intrinsically overbroad, precisely because they are not framed in a careful, explicit, and principled manner directed to achieving a proper balance between repression and safeguard. The upshot is that the criminal justice system is saddled with a lower level of safeguard than it could and would have achieved if it had not pretended to retain the unworkable formal system.

The medieval Europeans insisted on two eyewitnesses and wound

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up with a law of torture that allowed condemnation with no witnesses at all. American plea bargaining, in like fashion, sacrifices just those values that the unworkable system of adversary jury trial is meant to serve: lay participation in criminal adjudication, the presumption of innocence, the prosecutorial burden of proof beyond reasonable doubt, the right to confront and cross-examine accusers, the privilege against self-incrimination. Especially in its handling of the privilege against self-incrimination does American criminal procedure reach the outer bounds of incoherence. We have exaggerated the privilege to senseless lengths in formal doctrine, while in the plea bargaining system—which is our routine procedure for processing cases of serious crime—we have eliminated practically every trace of the privilege.

Furthermore, the sacrifice of our fundamental values through plea bargaining is needless. In its sad plea bargaining opinions of the 1970's, the Supreme Court has effectively admitted that for reasons of expediency American criminal justice cannot honor its promise of routine adversary criminal trial, but the Court has simply assumed that the present nontrial plea bargaining procedure is the inevitable alternative. There is, however, a middle path between the impossible system of routine adversary jury trial and the disgraceful nontrial system of plea bargaining. That path is a streamlined nonadversarial trial procedure.

Routine nonadversarial trials

The contemporary nonadversarial criminal justice systems of countries like West Germany have long demonstrated that advanced industrial societies can institute efficient criminal procedures that nevertheless provide for lay participation and for full adjudication in every case of serious crime. I have described the German system in detail in my *Comparative Criminal Procedure: Germany* (1977), and I have made no secret of my admiration for the brilliant balance that it strikes between safeguard and procedural effectiveness. Not the least of its achievements is that in cases of serious crime it functions with no plea bargaining whatsoever. Confessions are still tendered in many cases (41 percent in one sample), but they are not and cannot be bargained for; nor does a confession excuse the trial court from hearing sufficient evidence for conviction on what amounts to a beyond-reasonable-doubt standard of proof. In a trial procedure shorn of all the excesses of adversary procedure and the law of evidence, the time difference between trial without confes-

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sion and trial with confession is not all that great. Because an accused will be put to trial whether he confesses or not, he cannot inflict significant costs upon the prosecution by contesting an overwhelming case. Confessions are tendered at trial not because they are rewarded, but because there is no advantage to be wrung from the procedural system by withholding them.

Plea bargaining is all but incomprehensible to the Europeans, whose ordinary dispositive procedure is workable without such evasions. In the German press, the judicial procedure surrounding the criminal conviction and resignation of Vice President Agnew was viewed with the sort of wonder normally inspired by reports of the customs of primitive tribes. The *Badische Zeitung* reported as the story unfolded in October 1973: "The resignation occurred as part of a 'cowtrade,' as it can only in the United States be imagined."

I hope that over the coming decades we who still live under criminal justice systems that engage in condemnation without adjudication will face up to the failure of adversary criminal procedure. I believe that we will find in modern Continental criminal procedure an irresistible model for reform. For the moment, however, I am left to conclude with a paradox. Today in lands where the law of torture once governed, peoples who live in contentment with their criminal justice systems look out across the sea in disbelief to the spectacle of plea bargaining in America, while American tourists come by the thousands each year to gawk in disbelief at the decaying torture chambers of medieval castles.

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Families, sex, and the liberal agenda

ALLAN C. CARLSON

THE concept of "family policy" has attracted unprecedented attention within liberal political circles over the past four years. This attention, in turn, has generated numerous proposals aimed at strengthening American family life through government action.

The arguments of family-policy advocates follow a fairly standard analytical line. They begin by calling for a new emphasis, which Kenneth Keniston described for the Carnegie Council on Children as "abandoning the tendency to deal with children in isolation from their families or the society they live in. . . ." This change, advocates continue, involves a whole new perspective on public policy. The 1978 report by the National Commission on Families and Public Policies of the National Conference on Social Welfare (NCSW) suggests that the family-policy concept "may well provide fresh insight into social welfare, new perceptions of the individual's relationship to society, [and] a new formulation of the role of government in human affairs. . . ." The analysis then commonly turns to a presentation of statistics reflecting family stress, break-up, or change—such as a rise in the number of single-parent families, the growing percentage of working mothers, the swelling divorce rate, illegitimacy figures, rising welfare dependency, figures on teenage pregnancies,

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suicides, and runaways, and the number of unmarried, cohabitating couples.

Assessments of cause for this evident stress in American family life usually follow. The Carnegie Council's report faults in part the "American myths" of family independence, personal responsibility, technological advance, economic growth, and *laissez faire*. In addition, the report points to "the broad ecological pressures on children and their parents," chemicals in food, nuclear power, the unplanned nature of broadcasting, and "the economic drain of children" on parents, as forces undermining families' "capability to perform." The NCSW group cites the rigidification of the nineteenth-century American family ideal around a work-devoured, paycheck-oriented male tied to an economically and socially dependent woman and a brood of children, who are isolated from traditional sustaining institutions such as the extended family, neighborhood, and community. The Advisory Committee on Child Development of the Assembly of Behavioral and Social Sciences of the National Research Council (NRC), in its 1976 report *Toward a National Policy for Children and Families*, sees family difficulties related in significant degree to poverty, racial and sexual inequality, the decline of cities, poor housing, unemployment, inadequate health care, lack of transportation, the deterioration of the environment, and poor education. Every source agrees that existing governmental programs supporting children and families are totally inadequate and often destructive of family life.

In developing their family-policy proposals, advocates posit two principles: comprehensiveness and pluralism. Concerning the first, the Carnegie group argues for a United States family policy "as comprehensive as its defense policy," involving "coherent" social and economic planning, a multitude of services, and a multifaceted approach to the issues. As for "pluralism," advocates all agree that it requires recognition of "the many life-style choices that may produce a wide range of family forms." "Life style" choices with some legitimate claim to family status are said by some to include "child free" couples, unmarried couples, single-parent families, "single persons" families, homosexual pairings, communal arrangements, and—to fill in the gaps—assorted "minority life styles."

While varying in emphasis, specific family-policy proposals tend to include the following:

Income security. All family-policy proponents agree that family income in the United States remains significantly maldistributed. They support establishment of a guaranteed annual family income,

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or "decency standard," representing half of the U.S.'s median income. Means to that "family stabilizing" goal vary. The NCSW group advocates a taxable federal family allowance of $750 per dependent (to replace the personal income-tax deduction), at a cost of approximately $70 billion. The Carnegie group proposes a comprehensive "credit income tax" scheme, granting households a refundable $1500 tax credit for each family member, tied to an adult work requirement (no work, no credit) and a straight 50-percent tax on all income above the credit line. The NRC report leans toward an unspecified "negative income tax."

Full Employment. Joseph Califano stated in his widely praised September 1976 memo to Presidential candidate Jimmy Carter on American families: "[T]he most severe threat to family life stems from unemployment and lack of an adequate income." Most other advocates agree, and call for legally guaranteed jobs to all heads of households, tied to more and better central economic planning.

Affirmative Action. Given particular emphasis by the Carnegie report is the belief that current efforts at eliminating racial, sexual, and other forms of discrimination are moving with intolerable slowness. Equality of opportunity, many contend, is not enough to insure a stable basis for family life among minorities, women, and the handicapped. Greater affirmative-action effort is needed.

Health Care. Citing the American preoccupation with individuals, the relatively high infant-mortality rate among minorities, and the lack of pre- and post-natal maternity care for the poor, family-policy advocates call for a national health policy emphasizing preventive health care for all children. Their means to better health include "integration" of the health-care-delivery system with other family services, public accountability, more research, and national record keeping and monitoring of children's health.

Social Services. Finding the existing 280 federal programs aiding families and children to be "inadequate, uncoordinated and patchwork," the NCSW, and the NRC and Carnegie groups as well, support the creation of integrated family-support services funded at appreciably higher levels.

Day Care. All family-policy advocates agree that the government has a responsibility to ensure that families needing child care during working hours have available a wide range of substitute choices.

Sexual Law. While avoiding most references to sex, family-policy advocates do tend to cite the need for more sex education and wider availability of contraceptives to reduce teenage pregnancy. Many support widening access to abortion.

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Family Law. While emphasis varies, family-policy supporters tend to argue for stronger legal supports for families (including guaranteed due process in child-removal situations), greater legal autonomy for children, and reform of such abuse-prone areas of government involvement as foster care.

Work Law. All advocates support changes in work laws and new government incentives to accommodate the child-care needs of working parents.

Government. All sources agree that the government should be more aware of its impact on families. Most advocates support the idea of requiring that "family impact statements" be attached to proposed legislation and regulations.

In sum, family-policy advocates offer, as the way to reinvigorate American family life, virtually the entire liberal agenda: greater income redistribution, guaranteed minimum incomes, full employment policies, more social and economic planning, more and better integrated social services, reorganization and public funding of health care, more affirmative-action programs, better sex education, increased availability of contraceptives and abortion, government-funded day care, an emphasis on legal rights, work-law reforms, and a more sensitive, activist, and reorganized government.[1] They are focusing their attention on the scheduled 1980 (formerly 1979) White House Conference on Families. A "Coalition for the White House Conference" was organized in 1978 with a membership list "representing dramatically different family life styles and values" and including—together with more traditional family advocates such as the U.S. Catholic Conference and the YWCA—such reform-oriented groups as the American Association of Sex Educators, Counselors, and Therapists, the Child Welfare League of America, the National Council of Churches, the National Gay Task Force, the National Organization of Non-Parents, Women's Action Alliance, and Zero Population Growth.

[1] The political strategy being followed by American family-policy advocates has historical precedents. European social democrats have regularly used "family policy" as a potent argument, attracting conservative backing for a variety of welfare-policy proposals designed to save the family from dissolution or sterility. Swayed by the pro-natalist arguments of the 1942 Beveridge report, a number of British Conservatives lent their support to social-welfare policies such as children's allowances and creation of a national health service. They hoped such measures would stabilize family life, raise the United Kingdom's birth rate, and continue to people the Commonwealth with British stock. When Alva and Gunnar Myrdal advanced a sweeping pro-natalist family policy in 1934 that involved the socialist reconstruction of Swedish society, even the veteran conservative economist Gustav Cassel had to acknowledge the strength of their arguments and the need for some state intervention to support families.

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What is a family?

Family-policy advocates are certainly correct in their perception of stress and basic change. For though several recent studies—notably Mary Jo Bane's *Here To Stay*—have argued that American families are adjusting well to current social pressures, statistical evidence reflects fundamental alterations in the nation's family life. The divorce rate, for example, rose 150 percent between 1958 and 1974, with the annual number of divorces climbing to nearly 1 million. The number of children affected by divorce each year rose from 379,000 in 1957 to 1.1 million in 1974. The fertility rate (births per 1,000 women aged 15-44) has fallen from 122.7 in 1957 to 66.7 in 1975, reflecting a major retreat from child-bearing. The illegitimacy ratio (illegitimate births per 1,000 live births) has tripled in less than two decades, reaching 142.5 in 1975. The percentage of single-parent families, relative to all families with children under age six, rose from 8 percent in 1960 to 17 percent in 1974. In 1977, nearly 18 million U.S. children lived with only one parent—a 100-percent rise since 1960. Yet despite their appropriate emphasis on such changes, family-policy advocates have stumbled into definitional, attitudinal, and analytical errors that compromise their proposed policy response.

First, while paying deference to a "pluralism of family forms" may appear to reflect a sound liberal principle, the refusal of most family-policy advocates to set any identifiable norms at all leaves critical policy-related issues begging the question: What exactly is a "family"? If there can be no definition that excludes any form of human cohabitation, then what is a family policy trying to save, or restore, or strengthen, or help? And if all forms of human cohabitation are essentially equal, why have an expensive policy aimed at no particular goal? Inflation alone will ultimately compel most people to live with others. The "pluralism" school of family sociology, when translated into public policy, flounders on the hollowness of its basic concept.

Second, many family-policy advocates appear to be ambivalent toward birth and children. All Western European family policies developed in the 1930's and 1940's were predicated on pro-natalist sympathies. The state enthusiastically welcomed babies and encouraged parents to bear larger families. This gave some logical coherence to efforts to socialize child-rearing costs and justified the clearly stated policy preference for traditional nuclear families. However, many American liberals are now committed to a version of neo-Malthusianism that emphasizes over-population as a national threat

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and a relatively high birthrate as a cause of continuing poverty and ecological distress. Births—especially of third or later children, or among teenagers or the welfare population—are not particularly welcomed. In line with their ideological commitment, family-policy advocates usually buttress support for family allowances and the like with evidence that such measures will have no pro-natalist effect. Rhetorical support for infants and children, it would seem, has a somewhat airy core.

Third, family-policy activists have built their reform proposals on misinterpreted statistical evidence. The most significant and startling change—revealed by virtually every measure of family stability (divorce rate, number of children affected by divorce, illegitimacy ratio, fertility rate, juvenile-delinquency rate, or percentage of single-parent families)—is from a remarkable health and vitality for the American "nuclear" family in the 1946-60 period, followed by a striking shift toward marked instability *after 1960.* This historical shift of bewildering proportions has been ignored by most family-policy advocates, because their analysis of the causes behind contemporary family problems cannot explain the extraordinary change from evident family vitality in the late 1940's and 1950's to accelerating instability after 1960.

Examine, for instance, the "poverty argument": that poverty and low incomes create family stress and instability. Personal income, in fact, was everywhere rising and poverty progressively declining throughout the 1960's, and at rates far more rapid than during the 1950's. The percentage of children below the poverty line actually fell from 27 percent in 1959 to 15 percent in 1968. Yet at the same time, families clearly began to fragment.

Or take the "jobs argument": that unemployment is a chief cause of troubled families. During the 1960's unemployment rates for white and black workers progressively declined to levels equal to or below those achieved during the 1950's. Yet family disintegration in the post-1945 era began to accelerate only after 1960.

All other explanations similarly fall short. The 1960's experienced unprecedented advances in incomes, jobs, and status by racial minorities and women. Inflation remained at tolerably low levels from the early 1950's through the late 1960's. The movement of women into the post-World War II labor market began during the late 1940's, not the 1960's. Medicare and Medicaid extended health coverage in the 1960's to many of the aged and poor, part of an extraordinary nationwide expansion of quality health care. Social services grew dramatically during the 1960's under the auspices of

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hundreds of new federal and state programs. The number of social workers tripled in that decade alone. The presumed pressures of technology—television, nuclear power, processed foods—had their counterparts in the 1950's without appreciable results. The "myths" of technological advance, economic growth, family independence, personal responsibility, and *laissez faire,* all existed with equal or greater virulence in the late 1940's and 1950's without apparent effect on families. In fact, under the causal analysis and policy recommendations advanced by recent family-policy advocates, the 1950's should have been marked by family turmoil and instability, while the 1960's should have evidenced a new blossoming of family life. But exactly the opposite happened. Why?

Three developments

The instability characterizing American family life since 1960 results from the interplay of three developments: one demographic, one physiological and attitudinal, and one broadly ideological. None is amenable to intervention by a democratic state.

1. *The Demographic Bulge.* The very success of family life in the 1940's and 1950's generated the occasion of subsequent turmoil—a vast age cohort that began reaching adolescence in the early 1960's. The most unstable stage of an individual's life, adolescence is characterized by confused emotions, rebellion against parental and other authority, and the questioning of values and ethical constraints. To deal with adolescents, parents and other responsible adults require confidence in their own values, personal strength, and willingness to administer discipline tempered by understanding and love. Yet, apparently overwhelmed by the surging numbers of youth during the 1960's, American adults and the institutions they controlled collectively showed few such qualities. Only now is the last of the "baby boom" generation passing into the more stable young-adult years. In a complex manner, this demographic bulge certainly conditioned, and to some degree caused, the other two developments.

2. *The "Second" Sex Revolution.* Historian Edward Shorter argues for the existence of two sex revolutions in Western history: The first occurred in Europe between 1750 and 1850 (the United States, he suggests, was "born modern"), and was marked by the initial incursion of premarital sexual intercourse into the lives of the unmarried. The second, says Shorter, began between 1955 and 1965, and saw the generalization of intercourse among the majority of unmarried.

In the United States, the evidence reflecting major discontinuities

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after 1960 in the erotic life of the average young, white, unmarried woman seems conclusive. Among unmarried white women, ages 15 to 19, the illegitimacy rate was relatively stable through the 1950's —rising from 5.1 per 1,000 in 1950 to only 6.5 in 1962. Thereafter— and despite the spread of "the pill" and the widening availability of abortion—it climbed steadily, and reached 12.1 in 1975. A series of surveys from the 1960's shows as well startling increases in American "nonvirginity rates." Within a typical group of adolescent women questioned in 1971, nearly half had experienced intercourse by age 19, compared to only 17 percent in Alfred Kinsey's study during the 1940's. And the pace of this change is accelerating: A recent study found a 54-percent jump between 1971 and 1976 in the number of 16 year olds having had intercourse at least once. Interestingly, the illegitimacy rate among non-white females rose through the 1950's in conjunction with the surge of marital fertility, but began to *fall* in 1961. In many respects, the "second" sex revolution was a white, middle-class phenomenon.

It soon spread from youth to other parts of the population. In a major 1972 statistical study commissioned by the Playboy Foundation, Morton Hunt discovered that all Americans in the early 1970's —young and old alike—were having more sex, doing it in different ways, with a greater variety of partners, and feeling less guilty about it afterwards, than did their Kinsey-survey counterparts. Whereas 41 percent of married females ages 35 to 44 had experienced premarital sex, 81 percent of married females ages 18 to 24 had. While only 14 percent of Kinsey's "adolescent to age 25" group of white males had used cunnilingus in premarital foreplay, 69 percent of the same age cohort in 1972 said they had. Kinsey reported a median weekly marital coitus figure of 2.45 for persons ages 16 to 25; Hunt found a median of 3.25 for the 18-to-24 age group, with similar increases for all older cohorts.

Even more striking are the shifts in sexual attitudes evident in the period after 1960. Opinion surveys among college students show that virginity was still a mythically prized virtue in the late 1950's; a poll in 1970 found that three out of four students thought it unimportant whether or not they married a virgin. Whereas legal and easy abortion had been unthinkable in the United States in 1963, by 1972 it was legal, subject to certain limitations, in half a dozen states and was to be legally available everywhere only one year later. In the 1973 "Sorenson Report," researchers described the growing predominance of situation ethics in the sexual liaisons of young people. Rejecting laws or religious dogma as irrelevant to the problems of sex-

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ual partners, distrusting lifelong monogamy, suspicious of the restraints of fidelity, and believing "family" to interfere with sexual fulfillment, a growing number of youth placed sexual satisfaction at the center of their personal relationships.

What caused this upheaval in American sexual actions and attitudes after 1960? Among background factors were advances by the biological sciences, such as oral contraceptives; physiological changes such as earlier menstruation and later menopause; the dramatic growth in higher education, which drew together large numbers of unmarried youth; and changes in the national mood, including the decline in religious values and a new emphasis on "rights" which led to an obsession with self. Sexual researchers, from Freud through Kinsey to Masters and Johnson, moved emphasis ever further away from the idea of the sex act as an expression of human love toward preoccupation with the nature of the physiological release and "health" of the sex organs.

Perhaps more critical was what Vance Packard calls "the crumbling of traditional controls" over youth sexuality. The decline in parental authority over the awakening process, the decrease in community scrutiny, and the rise of a youth subculture, made it vastly more difficult to assure female virginity until marriage. Surveys from the 1940-to-1960 period show a clear correlation between religious devoutness and abstinence from premarital coitus. Yet with the apparent American retreat from religious belief starting in the late 1950's, church leaders grew pliable and non-judgmental in matters of personal morality. In addition, the spread of "the pill" and waning concern about social stigmatization led to a decline in the fear that sexual activity might lead to premarital pregnancy.

Allan Sherman—in his episodic, rude, but nonetheless insightful *The Rape of the A*P*E* (*American *Puritan *Ethic)*—offers a "conspiracy" theory of the sexual revolution. Sherman traces the sexual revolution's origins to the social upheaval of World War II, follows it through an underground existence in the 1950's, to its full-blown emergence after 1963 and final victory in the 1973 Supreme Court abortion decisions. Led by scattered members of the generation reaching adulthood in the 1940's who were bent on the "obscening of America," the attack centered on the sexual restraints imposed by nineteenth-century bourgeois culture—such as the repression of obscenity, pornography, indecent exposure, nudity, premarital sex, extra-marital sex, abortion, divorce, desertion, perversion—and on the whole "incredibly clean-cut and impossibly wholesome" American world of Disney, church socials, Shirley Temple, the

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YMCA, Blondie and Dagwood, *The Saturday Evening Post,* Motherhood, miniature golf, Coca-Cola, Apple Pie, and Hot Dogs. By the late 1960's, writes Sherman, "Legions of Lolitas joined the battle with batallions of Babbits and platoons of Portnoys. Manners and morals and great institutions bit the dust. Waterbeds splashed and vibrators jiggled. And when the air was cleared . . . the world was never going to be the same again. No one knew exactly how, but Western Civilization had been caught with its pants down."

And the impact of the sex revolution? Sherman suggests that it "removed America's backbone and revealed our awful secret: Stripped of the Puritan ethic, we have no morals at all." He adds that "nothing was reduced to less recognizable rubble than the revered . . . Institution of Marriage." Edward Shorter, a less euphoric coroner, considers the nuclear family of the 1970's wracked by some form of final tubercular spasm.

The institution of monogamous marriage is clearly in trouble, for the sexual revolution has made it vastly more difficult to retain monogamy's monopoly on sex. Marriages predicated mostly on sexual capability and erotic arousal prove fragile. Parents abandon and adolescents reject all sense of lineage, which monogamy alone can provide. The latter turn instead to peer groups and their own subculture in search of values and sexual gratification. As Pitrim Sorokin once observed: "A sex revolution drastically affects the lives of millions, deeply disturbs the community, and decisively influences the future of society." Families, simply put, were major casualties of the Western world's "second" sex revolution.

From "Father Knows Best" . . .

3. *Collapse of the Nuclear Family Norm.* The emergence of industrial capitalism and bourgeois society in the period from 1750 to 1850, according to Shorter, was tied to a dual revolution in "sentiments": heightened sexuality and gushing maternal love. The former change, rising among men and women of the European industrial class who were newly liberated from the sexual restraints of traditional agrarian communities, produced the "first" sex revolution referred to above. The latter change in sentiment welled up among the bourgeoisie, for economic growth had liberated women from other labor and allowed them to devote more time to better mothering and infant care.

Family life took shape about the home. The vital center of this new domesticity was the infant. An emotional web was spun around

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mother and baby, predicated on a new sense of the preciousness of infant life. Lloyd de Mause has compiled a large body of evidence showing the sweeping improvement in child-care practices that accompanied the rise of the bourgeoisie. Shockingly widespread practices of swaddling, child beating, infanticide, wet nursing (virtually an institutionalized form of infanticide), abandonment, sexual abuse, and even the sale of children, gave way to a surge of parental affection, as demonstrated by the rising popularity of maternal nursing, dramatic drops in infant-mortality rates, a new popular emphasis on the joys of domesticity and family life, and recognition of the priceless importance of infants and children. This valuation spread even to prenatal life. Nineteenth-century campaigns against abortion were largely a bourgeois phenomenon.

Girded by this value structure, the bourgeois nuclear family emerged as the Western family norm. Its characteristics were a stable heterosexual coupling based on love, the exclusiveness of the male-female sexual bond in marriage, the primacy of family attachments, the expectation of children, economic security for women and children, the obligation among family members for mutual support in crises, the acceptance of sex-determined roles within the family, and the prolongation of childhood. There was as well a linkage to bourgeois values of hard work, delayed gratification, and self-imposed restraints on personal behavior. The bourgeois nuclear family certainly never extended to a majority of American households. But like any social or cultural norm, it stood into the twentieth century as the ideal form of American family life, as the measure of normality or deviance, and as the mark of responsibility and respectability. It drew support from most other American social institutions —including law, government, organized religion, neighborhood, the media (such as it was), and the educated elite.

The American nuclear family first ran into trouble during the late nineteenth century, as evidenced in rapidly rising (although still relatively low) divorce figures and falling fertility. A retreat from parenthood grew more evident in the interwar period, primarily in the form of a significant rise in childless marriages. This apparent decline of family life led to the pessimistic sociological formulations of the 1930's which described the family's loss of function and approaching demise.

The post-1945 era, however, witnessed a remarkable and totally unexpected surge of familism and re-emergence of the belief that a family was incomplete without children. Fueled by the flood of GI's returning home to build normal lives, the period was marked

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by a dramatic rise in the marriage rate, a downward movement in average marriage age, swelling fertility among the married, increasing remarriage, and even higher fertility among the remarried. Sociologists now gave optimistic, supportive assessments of American family life. Capping this genre was William Goode's *World Revolution and Family Patterns,* which argued (with a heady dose of New Frontierism) that the "conjugal family" found in the industrial West—and linked to an ideology first shaped by Protestant asceticism—was the emerging norm among virtually all developing peoples.

. . . To "Three's Company"

In the mid-1960's, however, the nuclear family came under sustained ideological attack. The New Left revived the Marxist critique of the bourgeois family, viewing it as predicated on property relations, male supremacy, and the boredom of domestic bliss. Bourgeois marriage represented the crassest prostitution of both men and women and the domestic slavery of wives. Inspired by Friedrich Engels, the left stressed the relationship between heightened sexuality and the approaching demise of bourgeois family values. Unrestrained sexual intercourse and "true" sexual love demanded the dissolution of the "home," the transformation of housekeeping into a social industry, the collectivization of child care and education, and elimination of the concept of "illegitimacy."

For their part, radical minority spokesmen derided the "racist cultural imperialism" of the white middle class in imposing its family norms and supposedly alien morality on blacks, Hispanics, Native Americans, and other ethnic groups. Feminists drew on the Marxist analysis, arguing that the purpose of the family had been to secure men's ownership of women and children and to sustain male domination over women deprived of any life other than a restraining and debilitating motherhood. "Populationists" resurrected the Malthusian fear of resource shortages and economic decline arising from overpopulation, and opened their assault on the reproductive energies of the nuclear family. Casting parenthood in a negative or, at best, ambivalent role, they argued for "micro" or "childfree" families to save the world from disaster.

In face of this onslaught, institutions once sustaining the nuclear-family norm either proved crippled themselves, or deserted to the other side. Remnant white ethnic groups, which once served a supportive function for families in European immigrant communities, came under regular government and media attack during the 1960's

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as racist and reactionary. Minority groups found their destinies tied to federal power and the schemes of intellectuals. Neighborhood communities were broken apart by federal urban-renewal and housing programs, and by court-ordered busing.

Many churches, once supportive centers of nuclear family life, shifted ground. By the early 1970's, liberal Protestant and Jewish groups had abandoned many traditional moral and social precepts, including normative support for the nuclear family. For instance, a panel representing one large Protestant body affirmed in 1976 that "there is a diversity of types or forms of family existing in modern American society." Defining family as "a relationship community of more than one person," its list of variant forms includes two-parent, one-parent, childless, parentless, and "single persons" families. The traditional family norm found occasional support and sustenance only among culturally-derided Roman Catholic, Mormon, and scattered evangelical Protestant and orthodox Jewish groups.

The media, attracted to protest and evidence of unsettling change, wandered from the nuclear-family norm it had supported in the 1950's. Documentaries probed the failings and pathologies of the American family. Newscasts riveted attention on the New Left, youth culture, minority protests, and the dissolution of old values. *Father Knows Best, Leave It to Beaver,* and *I Love Lucy* gave way to *One Day At a Time, Three's Company,* and *Miss Winslow and Son.*

The corporate world followed the lure of money and struck its Faustian bargain with the anti-nuclear-family cause. Large corporations proceeded to publish books and magazines, press records, produce motion pictures, and sponsor television shows that struck at the heart of middle-class family values.

Legal institutions began to be reshaped. Research showed that most state marriage laws presumed lifelong commitment, a first marriage, procreation as an essential element of marriage, some division of labor in the family, middle-class status, and the Judeo-Christian ideal of a monogamous, heterosexual union. Stripped of their normative character—and portrayed as elements of bourgeois cultural imperialism—these family laws came under challenge; many have already been changed. In its 1973 *Roe* and *Doe* decisions, the U.S. Supreme Court struck down existing state abortion statutes that sustained the bourgeois belief in the sanctity of prenatal infant life. The Court's 1976 *Danforth* decision denied that abortion was in any sense a "family issue" and prohibited interference by a husband, or by a parent of a minor, with the absolute right of a

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woman to undergo an abortion during the initial three months of pregnancy.

The desertion by the professionals

The abandonment of the nuclear-family norm was most dramatic among family counselors, social workers, and sociologists. Articles appearing in the mid-1960's exposed and critically dissected the nuclear-family mythology encrusting family sociology and family counseling. Authors termed this mythology dangerous, arguing that because it served as the standard used by marriage and family counselors in judging family health it led to culturally biased advice. Starting in the late 1960's, a veritable flood of sociological books and essays attacked all aspects of middle-class family life. One searches in vain during this period for an authoritative voice defending the rapidly collapsing nuclear-family norm.

Revealing evidence of desertion from the old normative family concept comes from a comparison of successive editions of family-sociology textbooks. Those published before 1972 continue to view the middle-class nuclear family as the American norm. Those appearing after 1972 abandon normative concepts altogether.

For instance, Ira Reiss's 1971 text, *The Family System in America,* stresses the continuity and stability of the nuclear-family model, which he terms a system undergoing only "moderate change," not radical transition. The nuclear-family norm forms the book's ordering principle, and is used to identify deviant behavior such as premarital pregnancy and homosexuality. Reiss then saw the rest of the world as moving toward the American model.

In his 1976 edition (revealingly pluralized as *Family Systems in America*), however, Reiss emphasizes that "choices in all stages of the family are now legitimate far beyond what they were just five or ten years ago." The nuclear family no longer serves as the ordering principle of his text. In fact, there are no longer any family norms: "We are now involved in a society with a variety of life styles that necessitates that people be able to feel that their life style is proper to them, even though it may not be a proper life style for other people."

Bert Adams, in his 1971 text, *The American Family: A Sociological Interpretation,* essentially describes an American nuclear-family norm that, "[b]arring a major historical upheaval . . . is likely to persist over the next generation." Such an upheaval apparently occurred, for his 1976 edition, *The Family: A Sociological Interpre-*

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tation, stresses alternatives to the old nuclear family and the need for personal choice of an appropriate family life style.

Gerald Leslie, in his 1967 edition of *The Family in Social Context,* clearly states that the "white, Anglo-Saxon, Protestant, middle-class family is a kind of prototype for the larger society. . . . Its patterns are 'ideal' patterns for much of the non-white, non-Anglo, non-Protestant, non-middle-class segment of the population. . . . In twentieth-century America, however, *an increasing proportion of the population is achieving the ideal*" (emphasis added). Among the values found in this ideal family are: marriage as the dominant life goal for men and women; marriage based on love and free choice; the expectation that marriage should produce happiness for both partners; the belief that life has much to offer the young; the idea that childhood should be protected and prolonged; the confinement of sexual relations to marriage; the belief that husbands and wives have some traditional roles to play; and the idea that individual fulfillment should be sought in family living. This family model is clearly the classic bourgeois family.

Yet Leslie's 1976 edition not only discards the "middle class" family as the cultural norm (he finds it rejected by, among others, blacks, Chicanos, Indians, and Jews who are fighting "forced cultural homogenization"), but even attributes new values to the middle-class family that are radically different from those in his 1967 list. These are: equality of the sexes, including a flexible division of tasks between men and women; democracy in all status and power roles among and between parents and children; permissive, person-centered mate selection, including free sexual experimentation for youth and the right of men and women to enjoy sex, including premarital liaisons; a strong emphasis on sexual and conjugal companionship, tied to continuing functions such as child bearing, socialization, and economic cooperation; the professionalization of marriage and parental roles, including counseling and classes on marriage, childbirth, and parenthood; and a turn to divorce if counseling and classes fail.

Given the startling changes to be found in sociology textbooks, one might assume that the number of nuclear families fell dramatically in this period. But the proportion of nuclear families relative to all households in fact remained relatively steady through 1970. Prevailing family structures were not radically altered; but *the normative concept of the nuclear family*—attacked from many sides in the 1960's and abandoned by most theretofore supporting institutions—effectively collapsed in the early 1970's.

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Cultural and social norms provide a civilization with its ordering principles, its measures of morality and deviance, and its legacy to subsequent generations. They define for individuals the nature of responsibility, the ultimate purposes of social life, and the proper basis for human relationships. Nuclear families, now deprived of such a normative nature and the support thereby entailed, have fallen progressively into disarray.

In place of the nuclear family, the dominant voices in sociology and family-counseling professional journals are now describing the emergence of new normative concepts to define acceptable family life in the post-bourgeois era. While varying their emphases, such professionals cite certain values with regularity:

1. *Mutability.* There are no constants in moral questions nor in personal relationships.

2. *Choice.* There should be no bias towards marriage and children. Everything is open. All habitual and cultural attitudes may be questioned. All values are on trial.

3. *Experimentation.* Since there are no family or sexual norms, no traditions worthy of universal emulation, and no restraints, persons must be free to experiment with a variety of sexual partners and practices to find the sexual and family life styles appropriate for themselves.

4. *Self-fulfillment.* Morality demands freedom for people to realize their own potentials—and their own needs, desires, and tastes—with a minimum of social rules and regulations. Relationships should last only so long as they are mutually self-fulfilling.

5. *Uninhibited Sexuality.* Sexual gratification represents one of life's ultimate values. Access to regular sexual satisfaction should be viewed as a basic human right. There is no true humanness devoid of sexuality.

6. *The Problem of Children.* Sexuality must be viewed as totally separated from procreation. Parenthood should be undertaken only after a careful weighing of social, cultural, and economic costs. The burden of social proof is shifted away from the right of persons to remain "childfree" to questioning the right of persons to procreate. Given the problem of overpopulation, reproduction may have to be viewed as a privilege granted by a government working towards the goals of decreasing the quantity while increasing the quality of humankind. Unwanted pregnancies should be aborted.

In sum, any human relationship involving cohabitation that produces self-gratification and sexual fulfillment has some claim to valid family status. "Human actualizing" contracts, progressive mono-

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gamy, group marriage, polyandry, polygyny, communal arrangements, homosexual pairings, open marriage (involving group sex, swinging, or revolving mates), heterosexual and nonmonogamous cohabitation, "singlehood," *and* the old nuclear family, are all legitimate family "life styles." "Immorality" in sexual matters or "deviance" in family structure have become empty concepts.

Such new values are supported by and particularly evident among elements of the college-educated upper-middle class. While reassuring voices are correct in arguing that most Americans still live in traditional nuclear families, post-bourgeois family norms are starting to make a statistical dent. In 1970, for instance, there were 1,046,000 unmarried adults sharing living quarters with one person of the opposite sex; by 1977, the figure had swelled to 1.9 million. While such households still form only 2 percent of all "couple households," the 12-percent figure now found in Sweden may suggest the immediate American future.

The helping hand that harms

American family life is being fundamentally altered by two forces: from within, by the impact of the "second" sex revolution on male-female ties and on the linkage of generations; and from without, by the cultural abandonment of the nuclear-family norm and the normative embrace of amoral family and sexual ethics by elements of the educated upper-middle class. Even if a majority of Americans thought it desirable, a democratic government could not check or reverse these trends. On the one hand, the state cannot undo the sex revolution. It might as easily try to reverse the Industrial Revolution or any other nexus of social change that has substantially altered our national evolution. On the other hand, while the government of a free people may reflect a social norm and give it legal recognition and support, it cannot create such a standard, nor long sustain a normative concept devoid of cultural recognition.

Nor will state intervention on behalf of families succeed. Full-employment policies might achieve sound economic goals, and a national health-insurance program could democratize the provision of health care. Day-care subsidies would certainly ease the financial costs of single-parent or two-earner families and free more women for paid labor. Family allowances might help many children, and legal reforms could secure more legally enforceable rights for families and children. *But these measures will not strengthen families.*

The results, in fact, would probably be the opposite. In his re-

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view of Soviet attempts to strengthen family life in the Stalinist era, Lewis A. Coser was led to the conclusion that the state, by its very interference in the lives of citizens, must necessarily undermine the parental authority it seeks to restore. Recent research on the effects of Sweden's 1937 marriage-loan act—which was intended to encourage earlier marriage and more children per family—shows that the couples participating had *fewer* children than the unbenefited control population. And while defensive explanations abound, the fact remains that U.S. Department of Health, Education and Welfare experiments with income-maintenance programs have seen divorce, separation, and desertion figures significantly higher among families receiving a guaranteed federal income than among control families receiving no benefits. *The disconcerting reality appears to be that state social intervention on behalf of families actually weakens or destroys families.*

Harvard sociologist Carle Zimmerman concluded his massive 1947 study on the relationship of family and civilization by predicting that the final collapse of the traditional Western family would occur before the end of this century. "The results," he added, "will be much more drastic in the United States because, being the most extreme and inexperienced of the aggregates of Western civilization, it will take its first real 'sickness' most violently."

Can this reckoning be avoided? Viable family life may somehow survive in a normative vacuum. Or, echoing the experience of the 1950's, certain bourgeois family values—now enjoying something of an underground existence in little-noticed movements such as La Leche League International—might re-emerge as normative guides. Or, a new legitimate ordering principle for family life could evolve. The one certainty, though, is that the liberal family-policy agenda cannot overcome—for in some ways it actually reflects—the shallowness and confusion of prevailing cultural norms and the personal hedonism dominating American life.

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The federal government and the university

DEREK C. BOK

In his last major speech before leaving office, Dwight D. Eisenhower uttered his famous warning against the dangers arising from a mushrooming government bureaucracy. His graphic description of a vast "military-industrial complex" won a permanent place among the catchwords that characterize our society. But who among us still recalls the concern he voiced over the threat of big government to higher education? These words struck no spark in an era when universities could enjoy the fruits of Washington's largesse with few restrictions or controls. Yet today, the President's fears seem prophetic. In little more than a decade, relations between Washington and the academy have been transformed. After existing for generations as cloistered enclaves—free of even such basic requirements as workmen's compensation and unemployment insurance—universities must now comply with detailed rules that cover a long and growing list of campus activities.

This article, which seeks to arrive at conclusions concerning the proper federal role in higher education, is based on a longer, earlier analysis by the author in George Bonham (ed.), In the Public Interest: The Governmental Role in Academic Institutions (© Change, *1979*).

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This sudden avalanche has produced all the familiar confusions, inconsistencies, and red tape that often accompany federal regulation. More and more speeches by university presidents are laced with disapproving references to what President McGill of Columbia has termed the "myriad pedantic and sometimes contradictory requirements imposed by government regulation"; the "continuing swirl of adversary conflict"; and the "formidable bureaucracy" that "must be served with a constant diet of reports and data." These burdens are costly and annoying; there is much that can and should be done to lighten their weight. Nevertheless, it is not my purpose merely to complain about the delays and inconveniences of public regulation but to explore the more serious problems that arise when the government seeks to influence basic academic functions: what Justice Frankfurter once described as "the 'four essential freedoms' of a university—to determine for itself on academic grounds who may teach, what may be taught, how it should be taught, and who may be admitted to study." [1]

Universities have worked for generations to establish their autonomy over academic affairs, and Frankfurter plainly spoke for all of higher education when he declared: "For society's good, political power must abstain from instrusion into this activity of freedom, except for reasons that are exigent and obviously compelling." Despite these words, each of the university's "four essential freedoms" has become the subject of increasing federal scrutiny and regulation. In the selection of students, Congress has outlawed discrimination based on race, color, or national origin; quotas have been imposed on medical schools to secure the entry of Americans studying abroad; and the Supreme Court has trimmed the power of admissions officers to prefer minorities in choosing their students. In hiring faculty, universities must comply with affirmative-action requirements as well as rules forbidding discrimination based on race, sex, national origin, religion, or age. Congress has moved upon the curriculum by using the power of the purse to encourage dental schools to compel their students to train for six weeks in a medically underserved area, and government agencies have been considering the training requirements that medical schools should provide for primary-care physicians in order to qualify for federal funding. In the laboratory, federal law prohibits certain types of fetal experiments; HEW has imposed detailed procedural safeguards for all investigations involving human subjects; and Congress has actively

[1] *Sweezy* v. *New Hampshire,* 354 U.S. 234, 263 (1957).

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debated the use of comprehensive guidelines to regulate recombinant DNA research.[2]

In pondering these intrusions, many educators insist that the government has already gone too far and that further interference will almost certainly be unwarranted. Yet even a die-hard opponent of federal regulation will concede that the courts should prevent universities from discriminating against professors because they are black and that the National Science Foundation can properly decide how to allocate government funds between basic and applied research. The problem is where to draw the line. How much autonomy should universities have in carrying out their academic functions? Under what circumstances may the government intervene? And when the government acts, what methods of regulation should it employ to achieve its ends with minimum damage to the academic enterprise?

These issues are not simply matters of private concern to colleges and universities. They are important to the nation as well, for higher education is not merely another fragment in the vast mosaic of national life. Colleges and universities are America's principal source of new knowledge and advanced education, and knowledge and education are essential to progress in a modern society. Thus, our task is not merely to strike a proper balance between public needs and the private interests of the academy, but to decide how government and universities can work in harmony so that higher education will make its greatest contribution to the welfare of society. And that is where the problem lies. Because higher education has become so central to our culture, government is more and more inclined to intervene in order to make certain that our colleges and universities serve the public well. Yet we know that government can easily clasp education in a deadly embrace that stifles its cre-

[2] Much of this new regulation does not take the form of conventional lawmaking. Instead, Washington typically intervenes by creating rules and attaching them as conditions to the receipt of federal funds. The influence exerted by such rules is limited when public officials merely offer funds to pay the costs of a new activity and stipulate the terms by which it shall be carried out. In these cases, universities are free to decide whether or not to seek funds to establish the new program. On the other hand, the government exerts a leverage akin to the force of law when it attaches conditions *retroactively* to the continued receipt of federal funds—for example, when it decrees that it will no longer provide student-aid funds to institutions which fail to provide adequate facilities for the handicapped. The more the university depends on the receipt of the funds involved, the more severe the compulsion to adhere to the government's requirements. When Congress threatens to remove *all* federal support from institutions refusing to comply with its conditions, no major university can withstand the pressure since medical schools and research programs could not continue without government funds.

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ativity and vigor; this much is painfully evident from the experience of universities in other societies. If we wish to avoid such dangers, we must consider the role of state and university in a larger perspective instead of continuing to act in a piecemeal fashion, intervening here and there in response to a disconnected series of specific problems and special interests.

The justifications and costs of federal regulation

Three reasons help to explain why the government should normally leave academic matters in the hands of educators rather than public officials. To begin with, universities are complicated institutions. Their administration gives rise to problems that are difficult, specialized, and intangible, requiring judgment and experience of a kind that academicians are much more likely to possess than are government personnel. In addition, since universities work in the realm of ideas, it is particularly important to leave them free to pursue the truth by protecting them from political intervention. Finally, by respecting the independence of thousands of separate universities, society encourages innovation and maintains a diversity of institutions to meet the varying needs of a vast student population.

Although these arguments have force, they scarcely remove all need for government regulation. Now that higher education has grown so large, performing tasks of such public importance, its behavior can affect many interests in the society. When academic programs collide with other values, educators are not necessarily the best arbiters to resolve the conflict. We may concede that scientists need freedom to do their best work, but this scarcely means that scientists should have the right to decide how much of the taxpayer's money should be spent on research (as opposed to other public programs) or how much risk should be imposed on the safety of other human beings in order to carry out certain lines of investigation. Nor should we do away with unemployment-compensation laws in universities on the easy assumption that academic administrators will always take enough money from faculty salaries and scholarships to make adequate provision for employees who happen to lose their jobs.

We should also not suppose that the aggregate efforts of many hundreds of institutions and many thousands of professors will automatically distribute themselves in a pattern that matches the country's needs. For example, we cannot assume that academic scientists

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will divide their efforts appropriately between basic and applied research, or that some unseen hand will lead colleges and universities to train physicians or doctoral students in numbers corresponding to society's needs. If the government is subsidizing university programs or if these programs are important enough to the public, officials will be tempted to intervene whenever the results begin to stray too far from the nation's interests.

Finally, although educators have special competence to resolve many kinds of academic issues, they can make egregious errors in particular cases. Institutions may offer worthless instruction because of incompetence or financial pressure. Professors or administrators may act unfairly through inadvertence, bad judgment, or outright prejudice. Such actions can often do harm to individuals, especially today when receiving tenure, gaining admission to professional school, and acquiring degrees of every kind become important to so many careers. One may therefore concede universities a broad discretion in academic matters yet still argue for the government's right to protect the occasional victim who has suffered from a practice or decision that is demonstrably wrong.

These arguments lend support to many kinds of government intervention. At the same time, just as educators can have inflated notions about the proper scope of institutional autonomy, so may public servants exaggerate their ability to benefit the public by enacting rules and restrictions. Experience teaches us that government intrusion has serious limitations and costs that are inherent in the very process of public regulation.

To begin with, the officials who enact and interpret our laws often make mistakes. They may err because they do not adequately understand the institutions they seek to regulate. They may burden universities with inappropriate regulations designed for the different circumstances of industrial firms. Legislators may also press forward to act even though existing knowledge is insufficient to yield sound solutions for the problem at hand. They may make questionable decisions in the face of political pressure or accept doubtful compromises to achieve the consensus needed to enact legislation. These errors can be particularly costly when they emerge from Congress or some federal agency, since they are generally embodied in rules that extend to many, if not all, academic institutions. The resulting burdens will not only be widespread but may be long-lasting as well, since vested interests and inertia often combine to delay the reform of dubious legislation or even to block amendments entirely.

When the government does intervene, officials frequently act by

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imposing uniform rules that chip away at the diversity so important to our system of higher learning. Education is inescapably intangible and imperfect. Its progress depends on constant experimentation carried on through the innumerable trials and errors of many separate colleges and universities. These institutions need freedom to innovate. They also require independence enough to adapt their programs in many different ways to produce the variety needed to serve a vast student population of widely differing abilities, aspirations, and tastes. As a result, uniform rules weigh particularly on higher education. No one can specify the resulting costs with precision. But we should note that observers who have studied the remarkable record of our leading private institutions ascribe their success primarily to their relative freedom from governmental supervision.[3] Authorities in Europe have likewise begun to recognize the dangers of highly centralized systems of higher education and are seeking to introduce greater diversity by giving more autonomy to individual universities.[4]

Government intervention may not only narrow diversity, inhibit innovation, and result in costly errors; it can also force universities to spend substantial sums complying with federal regulations. At times, these expenditures result from costly renovations to help the handicapped, or to equalize athletic opportunities among men and women, or to alter laboratories to conform with changing safety requirements. More often, the burdens take the form of added staff and effort required to fill out forms, compile data, cope with on-site investigations, and meet the many procedural requirements that follow in the wake of federal laws and regulations.

The cumulative costs of compliance are already running into millions of dollars each year for large universities, and the relative burdens are undoubtedly greater for smaller institutions. In contrast to corporations, universities cannot readily pass along these costs by raising prices to consumers. State institutions may not receive authorization for higher tuitions and private colleges are often unable to raise charges any further and still compete with their heavily subsidized public counterparts. As a result, we can be reasonably sure that many academic institutions will have to defray the cost of complying with federal regulations by reducing their budgets for teaching and research. Under the stringent financial conditions that confront all universities today, further regulatory

[3] Edward Shils, "The American Private University," II *Minerva* (1973), p. 6.

[4] Burton Clark, "The Insulated Americans: Five Lessons from Abroad," *Change* (November 1978), p. 24.

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costs seem likely to impair the quality of academic work in increasingly serious ways.

If regulations merely cost money, administrators can try to find the necessary funds by cutting back their least valuable programs. But regulations often impose burdens that cannot be overcome in this fashion. For example, the constant threat of new interventions and new controversies demands the personal attention of top university officials and distracts them from their academic duties. This process has already reached the point where regular meetings of university presidents are devoted almost entirely to issues of government relations rather than questions of education and research. Similar burdens weigh upon professors as well. In most major universities, government forms and reports already devour thousands of faculty hours each year, hours that are taken in large part from research, class preparation, and counselling with students.

Although these problems are all familiar, there is a curious tendency in Washington to underplay their significance. They are typically regarded as "errors" attributable to faulty coordination, poor organization, or inept officials appointed by some previous administration. Now it is certainly true that many of the difficulties can be reduced by working harder to devise better regulatory strategies, to draft clearer regulations, and to attract abler public servants. And it is plainly worth making such an effort. Nevertheless, it should be clear by now that these problems are not simply "errors." They are an intrinsic part of the regulatory process and we should account for them systematically in considering the appropriate scope of federal intervention.

At present, government officials have a much more difficult time assessing the costs of new regulatory measures than they do in scrutinizing the reasons advanced to support intervention. University spokesmen can argue against proposed legislation by calling attention to problems of implementation. But neither they nor the Congress can weigh these burdens in detail, since no one will yet have drafted regulations to reveal just what will be required to carry out the legislative intent. For example, who could have anticipated the 10,000 words of regulatory prose that emerged from just 45 words of legislation requiring adequate opportunities for the handicapped? Similarly, in drafting regulations, an agency seldom works closely enough with affected groups to take full advantage of their ability to help anticipate problems and negotiate satisfactory compromises.

To counter these deficiencies, Congress could make wider use of its power to ask for draft regulations before finally approving regu-

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latory legislation. In addition, agencies might regularly appoint advisory committees composed of representatives from universities and other interested groups and then work closely with these committees from the very outset of the drafting process—or even prior to suggesting new legislation. Such procedures would doubtless lengthen the time required to enact and implement new laws. But there is simply no way to decide whether a proposed regulation is sound without considering all of the costs that intervention will entail. After all of the difficulties encountered under recent regulatory legislation, the government might well do more to promote the public interest in the long run by taking greater care before undertaking ambitious new programs.

Strategies of regulation

When public officials study some new initiative to regulate higher education, they must do more than inquire what they hope to gain by intervening and what the accompanying costs might be. They should also consider what strategies to employ in order to achieve their goals with the least possible harm to the academic enterprise. In reviewing this question, the government can choose among at least four alternatives. It may issue *commands* to force universities to stop doing something, or to take some affirmative step, or to conform to a series of substantive requirements or standards. Officials can also impose *procedures* that require universities to review certain decisions or study particular problems with special care. A third method available to the government is to offer *subsidies* to elicit some desired action on the part of universities, such as building new facilities or performing particular types of research. Finally, public officials can try to strengthen *market forces* and thus rely on greater competition to achieve the desired ends.

Although each of these alternatives presents special advantages and risks, officials rarely take sufficient time and care in selecting the most appropriate method to employ. As a result, poor choices of strategy represent a major cause of unwise interventions and unnecessary administrative burdens. To put the matter more positively, the government has an opportunity to do a much better job of reconciling the interests of higher education with other public concerns by making sounder choices of regulatory technique.

Market Forces. By strengthening market forces, officials may be able to avoid making difficult and unpopular decisions by relying on individual choices within the private economy. Thus, if Congress

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wished to improve graduate education, it might do better to give generous stipends to able students—and allow them to choose their own graduate program—rather than attempt the prickly task of designating "outstanding" institutions to qualify for direct federal support. Similarly, a government intent upon protecting students from substandard educational programs might wisely prefer to insist on more accurate disclosure to applicants instead of embarking on the treacherous course of establishing minimum standards of educational quality.

Although market strategies have their virtues, they also have severe limitations. Many social ends cannot be achieved through the operation of market forces. Better information about job opportunities may help certain women and minorities locate academic posts, but such measures will not do away with the need for rules outlawing discrimination. Nor will market forces insure that handicapped students achieve full access to higher education or that laboratories observe a due regard for public safety. Furthermore, because universities do not constitute a free market in the ordinary commercial sense, efforts to rely on market forces will often prove impossible or prohibitively expensive. For example, independent colleges cannot charge tuitions that are competitive with those of the heavily subsidized public institutions. As a result, while the government might strengthen worthy private colleges to some extent by giving more federal aid to students, Congress would find it expensive and politically unattractive to devise an aid policy that would actually permit all colleges to vie equally for students on the basis of academic quality. For all these reasons, though efforts to strengthen market forces may have a limited, supplementary role in helping to achieve public ends, they will rarely succeed in removing the need for more direct forms of government intervention.

Subsidies. Subsidies offer a remarkably versatile means of bringing about constructive change. They can be used to increase the supply of minority faculty, to develop new training programs, to encourage particular forms of research—indeed, to strengthen almost any form of worthy endeavor and call forth almost any new program to further the public interest. Their special virtue lies in their capacity to elicit behavior from universities in a way that minimizes compulsion and preserves diversity by allowing each institution to refrain from participating if it finds the proposed activity unsuited to its needs and objectives. Subsidies do cost money. But the expense is usually justified since the government will be seeking to use universities to accomplish public ends.

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Notwithstanding these advantages, the subsidy can lead to problems of its own. Public officials may impose such meticulous accounting requirements that faculty members will be diverted from doing their best work. Government funds may distort the priorities of a university, or create gross differences in salaries and perquisites within the institution, or divert faculty energies excessively from teaching to research. Subsidies can also create dependencies and vested interests that make it hard to withdraw the funds when the need has passed. Above all, government officials may overreach themselves by setting detailed criteria to govern the use of public funds for academic purposes. Such criteria do not have the force of law, since universities need not apply for the funds. But the results will suffer nonetheless if officials with limited experience try to impose their own judgment on academic matters by fixing detailed prescriptions as to how research should be carried out or how training programs should be constituted.

The problems just described are undoubtedly real and can easily get out of hand. Yet all of them are problems that government and university officials can overcome through conscientious management. On the other hand, as a regulatory device the subsidy has inherent limitations that cannot be avoided by careful administration. The strategy works best when the government's aim is to persuade institutions to undertake a new activity. But the subsidy is generally an inappropriate device to prevent universities from engaging in some form of undesirable behavior. It is distasteful to subsidize institutions for refraining from unjustifiable acts and prohibitively expensive to reward them for satisfying some minimum standard that almost all would routinely achieve in any event. In situations such as these, the government can normally achieve its ends only by resorting to more intrusive forms of regulation.

Sterner measures

Procedural requirements. The government sometimes insists that educational institutions undertake some form of review to insure careful consideration of particular programs or decisions. Thus, courts have required universities to offer a fair hearing to professors before discharging them for misconduct, and the Labor Department has insisted on reasonable grievance procedures for women and minorities who allege that they have suffered from discrimination. By requiring such review, officials can see to it that disputes are settled inexpensively and can encourage universities to act with

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care and deliberation while permitting academic officers to make the actual decisions involved. In this fashion, the government induces universities to act in accordance with the public interest without the risk of having inexperienced public officials render academic judgments they are ill-equipped to make.

Procedural requirements work best in situations where the following characteristics exist: The elements of a fair procedure must be accepted and widely understood, so that the government is largely confirming established practice rather than imposing detailed procedures that may be unsuited to academic institutions. In addition, the expense involved must not be out of proportion to the importance of the underlying problem. For obvious reasons, it would be extremely burdensome and unwise to require universities to review every dispute over an examination grade or every protested decision from the admissions office. Finally, the values at stake must be shared sufficiently widely that universities will normally reach decisions that conform to the public interest if they are made to take the time to study the issue with care. Thus grievance and hearing procedures have been effective in universities precisely because few institutions will support a department chairman or an administrator who is shown to have discriminated against women and minorities or to have fired a professor for insubstantial reasons. When these elements are not present, procedural requirements are likely either to do little good or to create burdens and costs that exceed any benefits achieved.

These burdens can easily be compounded by the rigidity that typically accompanies federal requirements. Although legally mandated procedures may be inappropriate or unnecessary for many institutions, the government will rarely agree to make exceptions unless there are clear-cut reasons for doing so—reasons that do not force officials to make subjective, controversial judgments. For example, the Office of Education has insisted that every accreditation include an elaborate self-study by the institution to determine its goals and assess its ability to meet them. At first glance, this requirement seems innocuous enough. But most institutions clearly deserve accreditation, and many of them will not need to undergo a costly self-examination, either because their programs are plainly in good health, or because the time is not ripe for such a review, or because a more limited, focused assessment would be more appropriate. Even so, they must comply, and though the consequences are hardly catastrophic, the requirement often leads to needless costs and distractions.

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More serious problems have arisen in the field of affirmative action where the government has called for elaborate procedures to assess the availability of minority and women faculty members and to set detailed targets for future hiring. These requirements have been extremely costly and frustrating. The statistical methodology has been highly questionable, the rules have often been confusing and inconsistent, and the task of compiling data has been onerous. In return for these burdens, the impact on faculty hiring has been modest, and much of the progress made has come about not by affirmative action but because of rising numbers of women and minorities receiving advanced degrees. In retrospect, many of these difficulties stem from the methods the government used to attack the underlying problem, for the heavy reliance on elaborate affirmative-action plans was a questionable strategy, at least for minorities and probably for women as well.

When affirmative action began, Asian-Americans were already so well represented on university faculties that one may legitimately ask why they were even included in the program. Other minorities, notably blacks, were clearly underrepresented relative to their share of the total population. But closer examination would have revealed that less than 2 percent of the nation's Ph.D.'s were black, and they were already commanding higher salaries on the average than their white counterparts with comparable experience and publication records.[5] Hence, it should have been clear that the core problem was not that qualified minorities were being overlooked for faculty posts but that the supply of black (and Spanish-surname) candidates was far too small.

The problem of women faculty is somewhat different, for a stronger case can be made that they have experienced widespread discrimination in hiring and promotion.[6] But laws were already on the books forbidding discrimination either in specific cases or as a matter of institutional practice. Affirmative action supplemented these laws with costly requirements for elaborate plans, projections, and statistical analyses—all of somewhat questionable value. Nothing was done to attack other obstacles of equal seriousness to women, such as bearing a disproportionate burden of family duties during the years most crucial to advancement and tenure.

[5] Richard Freeman, "The New Market for Black Academicians," 30 *Industrial and Labor Relations Review* (January 1977), p. 161.

[6] Opportunities for Women in Higher Education, Appendix C, Carnegie Commission on Higher Education (1973); H. S. Astin and A. E. Beyer, "Sex Discrimination in Academe," 53 *Education Record* (1972), p. 101.

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In these circumstances, Washington officials would have done well to consider other strategies for assisting women and minorities. Rather than insist on voluminous data and expensive statistical analyses, the government might have confined itself to a few procedural requirements to encourage the use of women and minorities on search committees and to insure regular solicitation of women's and minorities' professional groups for names of qualified candidates. At the same time, positive steps could have been taken to increase the number of black, Spanish-surname, and native-American candidates by offering graduate fellowships and funds for summer programs to expose minority college students to graduate work in research universities. Similarly, government officials might have assisted women by considering research grants for nontenured professors with families and for older women seeking to return to academic life. Finally, the government might have made more imaginative use of information as a means of influencing university behavior. Federal officials could have tried to expand employment opportunities and access by working with professional groups to disseminate information concerning available women (and minority) candidates. And government agencies could have helped to generate informed concern within academic communities by publicizing data comparing each university's progress in hiring women and minority faculty with the records of other institutions of a similar type.

One may argue over the best methods for enhancing opportunities for women and minority faculty. But it would be hard to maintain that the present program is the most efficient way to achieve the government's aims. At the very least, affirmative action illustrates the difficulties that can arise from moving too fast to regulate academic affairs without taking time to analyze the problem and choose the strategy of intervention best designed to achieve success.

Rules. The most intrusive form of regulation is to issue an order, either by legal command or by attaching conditions to the continued use of federal funds. In framing orders, the government is generally on safest ground when it simply prohibits a specific act that offends some compelling public interest, such as discriminating against an applicant for admission on racial grounds. Even in these clear cases, rules create problems, either because officials will occasionally err in deciding whether discrimination has occurred or because of the costs and delays incurred in defending ill-founded law suits. But almost everyone would agree that these burdens are worth imposing to prevent a manifest injustice.

When the government issues rules that reach beyond the classic

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forms of discrimination and abuse, it may not only increase litigation—with all the attendant vagaries, uncertainties, and costs—it may also make mistakes that impose much heavier burdens on large numbers of institutions. Several years ago, for example, Congress enacted the so-called Buckley amendment which sought, among other things, to protect students from unfair or malicious letters of recommendation by giving them access to their admissions files and other records. While this legislation may have occasionally helped to avoid an injustice, most experienced observers believe that these gains have been outweighed by the tendency of the amendment to discourage candor on the part of those who write letters of recommendation. Much more serious consequences are likely to result from the new federal rule forbidding mandatory retirement prior to age 70. Although this requirement may work well enough in industry, it will affect university faculties adversely by further reducing academic job opportunities already depleted by the projected decline in student population over the next generation. In these circumstances, the new retirement law seems destined to allow existing faculty a few extra years of service at the cost of retarding affirmative action, frustrating the careers of many able young teachers, and inhibiting universities from renewing themselves by bringing new blood to their faculties.

Even plausible rules often interfere in questionable ways with particular universities. Regulations which work reasonably well in most instances may unexpectedly prove to make little sense when applied to institutions with special circumstances or unusual programs. Similarly, rules that seem sensible to most people may still conflict with values and practices that are strongly upheld by special groups of institutions. Thus, restrictions against age discrimination may interfere with certain medical schools that favor younger applicants on the ground that they will have longer periods of service to give to their profession. Prohibitions against *all* discrimination based on sex may bar women's colleges that prefer to appoint women faculty in a sincere belief that role models are important to their educational purposes. Rules condemning the dismissal of unmarried pregnant women may frustrate the efforts of conservative colleges to impose strict standards of behavior on their faculty. One may agree or disagree with these academic policies. But the very essence of diversity is the freedom to experiment, to make mistakes, to cling to values not commonly shared within the society. Such freedoms have their place, especially in a society that respects the virtues of pluralism. Yet diversity is inevitably diminished by an

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accumulation of rules that translate majority preferences into federal commands.

Still further complications arise when the government does not merely condemn particular practices but moves affirmatively to compel faculty members to perform their academic work in specified ways. Public officials may order that a particular course be given, but they cannot make sure that the classes will be adequately taught. A court can force a university to hire an aggrieved faculty member, but a judge has no power to require colleagues to offer the cooperation and respect that are necessary to enable most professors to be effective and satisfied in their work. In short, no official can order professors to act with enthusiasm or conviction. And this is a serious defect, for few academic pursuits are worth much if they are carried on in any other way. As a result, requirements tend to be less effective than subsidies as a means of persuading universities to respond in some affirmative fashion.

The problems just described are greatly compounded when the government moves beyond particular rules and imposes a series of substantive standards to regulate complex matters—such as the admission of students, the selection of faculty, the nature of the curriculum, or the minimum acceptable quality of academic institutions. Since such standards embody a multitude of rules, public officials run the gravest risk of making mistakes, narrowing diversity, and stifling innovation. Congress can try to relieve these problems by framing more flexible standards and then giving discretion to administrative officers to apply these measures to specific cases. But this strategy merely introduces a new set of dangers. Mistakes will occur since agency personnel often lack the training and experience to make sound academic decisions. Regional offices will arrive at conflicting policies, causing uncertainty and confusion. Understaffed and overburdened by the task of applying general rules to complex institutions, officials are likely to subject universities to frustrating delays and recurrent demands for new data, new forms, and new explanations. Since all these defects are inimical to the educational process, standards represent a last resort to be utilized only when the need for intervention is compelling and no other regulatory device exists that is adequate to solve the problem.

Some modest proposals

With this review of the regulatory strategies open to the government, what guidance can we offer in defining an appropriate federal

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role in higher education? The task is assuredly not an easy one, for each regulatory proposal tends to stand or fall on its own peculiar facts. Nevertheless, I will hazard a few tentative suggestions if only to provoke discussion.

Inappropriate Intervention. Two kinds of federal rules threaten the academic process in such fundamental ways that we can safely regard them as inherently wrong. The first category includes attempts by the government to regulate the content of ideas and knowledge that members of the university community seek to discover, disseminate, or learn. Thus, HEW officials plainly erred in 1974 by proposing regulations that required universities to review course materials "to ensure that they do not reflect discrimination on the basis of sex. . . ." [7] The government should likewise refrain from discouraging research that might result in the discovery of some unsettling piece of knowledge, or from putting pressure on the university to hire or fire professors because of their opinions, or from prohibiting certain types of people from studying in an academic institution through concern for what they might learn or say. These limits on government power are much in keeping with the First Amendment aims of maintaining freedom of speech and an open marketplace of ideas. They seem especially important in the case of academic institutions. Since universities are our principal resource for developing new knowledge as well as a major instrument for appraising our values and our institutions, any attempt to impose an orthodoxy on higher education strikes directly at a process of discovery and criticism that is essential to progress in a free society.

The second category includes those cases in which the federal government tries to overrule university decisions about academic matters, not to promote some separate interest of legitimate public concern, but simply because public officials believe that they can do a better job of deciding what is needed to accomplish academic ends. For example, it was inappropriate for Congress to pressure medical schools into accepting quotas of American students who had studied abroad, since Congress was not asserting some superior independent public interest but was simply responding to constituent pressure to prefer one group of potential students over others. The same point could be made if the government concluded that

[7] The HEW initiative and subsequent decision to withdraw the controversial provision are described by Richard Lyman in "Federal Regulation and Institutional Autonomy: A University President's View," *Bureaucrats and Brainpower: Government Regulation of Universities* (Seabury, ed., 1979), pp. 35-37.

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lawyers should be taught by one pedagogic method rather than another, or that particular courses should be put in the curriculum to improve the quality of education, or that certain criteria should be followed in order to make better faculty appointments.

In listing these cases, I do not mean to suggest that public officials can never decide academic issues more wisely than universities —any more than the Supreme Court would insist that government censors could never succeed in finding a book or idea that actually deserved to be suppressed. My conclusion simply rests on a conviction that if the government freely substitutes its judgment and overrules universities on academic issues, the results, on the whole, will be harmful to the quality of higher education. The results will be harmful for a multitude of reasons: because government officials will not know as much about academic issues as educators and faculty members; because government rules are likely to impress uniformity and rigidity on a field of activity that needs diversity, experimentation, and change; because teaching and research do better under conditions of freedom rather than external direction; and because efforts to determine the academic policies of 3,000 separate institutions are likely to be expensive and difficult to enforce. Universities will doubtless make mistakes if they are left to their own devices. But our decentralized system limits the impact of these errors by making it possible for aggrieved professors and students to move to other colleges and universities if they are deprived of the appointment, the right of admission, or the course of study which they feel they deserve.

Beyond these forbidden categories lies a wide variety of cases where Washington acts not to censor ideas nor to substitute its own academic judgments, but to promote some other public aim that is somehow affected by university policies and practices. In situations of this kind, educators often lack the objectivity and experience to balance their academic concerns against the separate interests that affect other groups in the society. Hence, public officials can properly consider whether or not to intervene, and while we may attack their decisions as unwise, we cannot regard their actions as inherently wrong or illegitimate.

Promoting New Services. On many occasions, the government will seek to further some separate public purpose by inducing universities to provide a new or expanded service. For example, Congress may decide that society needs more doctors, more classrooms, or more research on energy. In these cases, the government should normally elicit the desired service by offering a subsidy (taking care to avoid

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excessively detailed requirements governing the methods used to provide the service, and relying on university consultants wherever possible to help make any academic judgments involved in awarding public funds).

The government has sometimes chosen to elicit new services, not by offering a subsidy, but by using compulsion to force universities to perform. Thus Congress has threatened not to renew capitation funds for any medical school that would not agree to increase its class size or accept a quota of American students who had begun their studies abroad. Such tactics interfere needlessly with institutional freedom, for Congress could have achieved its purpose by simply offering a subsidy to cover the cost to any schools that agreed to expand their classes or accept American students studying in other countries.

Requirements should be preferred to subsidies only when strong reasons exist for insisting that *all* institutions in a given group join in providing the desired service. Affirmative-action programs and renovations for the handicapped offer apt examples. Even in these instances, however, the government should provide reimbursement for the costs involved, since it is using universities as instruments to achieve broader goals of value to the entire society.[8] If it ignores this principle, Congress will not only act unfairly; it will often do more harm than good, since it cannot know what activities universities will have to sacrifice in order to finance the new programs. Thus, federal requirements for the handicapped have often caused universities to install costly ramps and elevators which yield benefits so infrequent and speculative as not to compare with those that might have resulted from continuing to use the diverted funds for scholarships or other educational purposes. For these reasons, only in cases such as minimum wages, social security, or workmen's compensation—where Washington is simply setting the basic minimum terms which universities must observe toward their own students and employees—should academic institutions be required to assume the cost of providing new benefits as a normal operating expense.

Preventing Abuse. On many occasions, the government will wish to intervene, not to promote a new activity, but to prevent universities from behaving in some undesirable way. For example, Congress may wish to establish safety measures for laboratories or stan-

[8] Affirmative-action programs and measures for the handicapped are not primarily designed to insure fair treatment of a university's own students and faculty; they require universities to make positive efforts to expand opportunities for women, minorities, and handicapped persons throughout the society.

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dards of accountability to avoid the waste of public funds. In such cases, the government can hardly escape from enacting rules; the principal question is how to strike a judicious balance that will adequately protect the public without imposing excessive burdens of time and money on universities.

At present, the pendulum seems to be swinging uncomfortably far in the direction of strict accountability. Thus, agency officials have come to believe—with some reason—that they have more to lose from exposés of waste and mismanagement of research funds than they stand to gain by protecting able investigators from a stifling burden of accounting forms and time sheets. Yet it is far from clear that the public is getting a good bargain.

Most of the current accounting requirements seek to prevent investigators from using some of the research funds from one grant to support graduate instruction or research under some other governmentally supported project. Public officials are surely justified in attempting to stop unauthorized shifts of this kind. At the same time, since all of the uses to which the federal funds are being put have obvious social value, it is not clear how much can be gained by creating more and more minute and costly requirements to insure that each federal dollar goes only for its specific intended use. What *is* clear is that scientists already spend a large and growing fraction of their time preparing more and more detailed research proposals, filling out safety and affirmative-action reports, serving on various oversight and review committees, and attempting to comply with increasingly intricate reporting and accounting requirements. The cost of adding to these burdens cannot be measured in money alone. In any society, the number of creative scientists is extremely small. When we divert too much of their time from research to administration, we lose a precious resource that cannot be replaced by simply hiring more investigators, even if universities could afford to do so.

The government may also consider preventive regulation to discourage substandard educational practices which might harm unwary students, expose the public to incompetent professionals, or squander federal scholarship funds on worthless academic programs. But efforts of this kind are extremely hazardous. The educational process is sufficiently subtle and intangible that it is difficult to measure success or quality by any objective standard, such as minimum class hours, faculty-student ratios, or numbers of books in the library. Attempts to impose such standards also carry a grave danger of imposing rigidity and uniformity where there should be diversity

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and experimentation, of producing incongruous results for institutions with special missions and needs, and of creating doubt and confusion over what the requirements mean. Moreover, standards of this kind normally generate all manner of artful stratagems to circumvent the law, and thus provoke the government to assume increasing enforcement costs and to issue detailed educational judgments that are beyond its competence to make.

Because of these problems, the government should seek other remedies than quality standards to guard society from the effects of poor educational programs. Individual students can be protected by requiring each institution to provide more accurate information to the public about its academic programs, and by prohibiting unreasonable refund practices that inhibit students from leaving institutions that do not meet their expectations. Officials can do more to shield the public from incompetent practitioners by setting adequate testing and licensing requirements for the professions than by imposing minimum standards on universities. The government may seek still further protection to insure that federal scholarship funds are not diverted to incompetent institutions. But HEW has wisely looked to private accrediting agencies to make the academic judgments required. It should continue to do so—and rely on the antitrust laws or on simple safeguards relating to procedures and membership in order to insure that accrediting bodies perform responsibly.[9]

A final reason for preventive regulation is to protect individuals from injustice. In this vintage period of consumer protection and individual rights, the government is increasingly asked to impose new measures to guard students and faculty from unfair treatment in admissions, hiring, disciplinary proceedings, and almost every other area of academic life. The opportunities for intervention are

[9] The dangers of government rule-making have been aptly demonstrated on the few occasions when federal agencies have imposed procedural or substantive standards for assessing educational quality. As previously mentioned, HEW has caused unnecessary trouble and expense by insisting that each accreditation be accompanied by a self-study on the part of the institution under review. Another example is the Veterans Administration rule preventing full-time GI benefits from flowing to any academic program that does not have at least twelve hours of classroom attendance each week. This standard ruled out a Wayne State program for intensive weekend study that had been previously approved by accreditation groups and cited positively by UNESCO. It is true, of course, that many of these same difficulties can arise in a system of private accreditation. But private bodies are likely to be more flexible and less resistant to change. In addition, private accreditation tends to attract abler, more experienced professors who perform this service as a voluntary obligation rather than a government job, and who can often give helpful advice even to strong academic institutions.

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virtually limitless. For example, a conference committee of the House and Senate recently agreed to consider a proposal to deny all capitation grants to medical schools that discriminate among applicants on the basis of their views about abortion. We may agree that such opinions should be irrelevant to gaining admission to study medicine. The same could doubtless be said of a student's views on national health insurance, fetal research, recombinant DNA experiments, transcendental meditation, or the future of the Republican Party. But is it really wise for the federal government to try to prohibit universities from considering particular items in the bottomless pit of inappropriate criteria for admission? Any effort by the Congress to proceed down this path would surely expose higher education to more and more of the dangers earlier described—the vagaries, costs, and uncertainties of litigation, the gradual narrowing of diversity and innovation, and the risk of enacting questionable rules such as the Buckley amendment and the extension of mandatory retirement.

It is true, of course, that rules to insure fairness may succeed in preventing a number of unwise and arbitrary acts on the part of universities. But the effects of these missteps are considerably reduced by the opportunities available to students and faculty to seek admission or employment at other institutions. Hence, the government should exercise great caution in enacting rules of this kind. No one would dispute the decision to intervene in cases—such as discrimination against women or blacks—where there is a principle at stake of such compelling importance that even occasional transgressions must be prohibited. And the courts would also be justified in protecting existing students and faculty by requiring that they not be dismissed or seriously penalized on grounds for which they had no reasonable notice or without an opportunity for some sort of review by the institution. But Congress should resist the temptation to enact new rules simply to prevent actions on the part of universities that government officials happen to consider unreasonable. The list of such prohibitions will be endless, and the resulting web of rules is almost certain to result in costs out of all proportion to the actual benefits achieved.

To some readers, these suggestions may seem to leave too little scope for public regulation. For it is always tempting to suppose that present practices might be improved with a bit more control over the freedom of universities to decide who should pass through the gateways to the great professions, or what students should learn to prepare themselves for an important occupation, or how best to

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harness the power of science as a force for good rather than evil. I have tried to mark the pitfalls that beset this course. They are serious and deserve our caution and concern. As noted earlier in this essay, we need a strong system of higher education because of the importance of knowledge and advanced education to almost every significant aspect of modern society—our technological progress and economic growth, our success in conquering disease, the vigor of our cultural life, the quality of our professions, and indeed, the capacity of government itself to respond effectively and imaginatively to complex social problems. If our colleges and universities were demonstrably mediocre and insensitive to national needs, we might have little to lose by urging more government intervention. With much assistance from the federal government, however, we have built a system of higher education universally regarded as the best in the world in terms of the quality of research, the eminence of our leading universities, the access provided to all groups and income strata, and the responsiveness of the system to widely varying student needs. This does not mean that our colleges and universities are perfect, or even nearly so, nor does it imply that higher education should be immune from regulation. The point is simply that our colleges and universities have become an important national asset and that we cannot afford to underestimate the risks we run by burdening them with more and more restrictions.

In these circumstances, I believe that society will be served best if public officials observe a presumption against such regulation—not an absolute presumption, by any means, but one that demands a clear and convincing showing that other interests are sufficiently compelling to justify imposing further rules and procedural requirements. Over the long run, the contributions of the university can easily be stunted rather than encouraged by the force of regulation, for they are usually the product of the individual mind working at its own pace, in its own way, according to its own inclinations and convictions. In education, commands do not readily evoke the desired response, nor will the ordered furrows of the law provide the richest soil for the cultivation of learning and discovery. If we would truly encourage academic pursuits, there is much in Samuel Johnson's epigram:

> How small, of all that human hearts endure,
> That part which laws or kings can cause or cure!

This is surely a lesson that college presidents and public officials can both contemplate with profit.

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Why Social Security is in trouble

NATHAN KEYFITZ

AMERICAN social security payments by wage earners and their employers in 1977 reached $95 billion. This compares with $140 billion of all personal savings plus undistributed corporation profits. The first figure can be looked at as the savings of working people against the contingencies of old age and sickness; the second, as mainly the voluntary savings of the more affluent for whatever purposes more affluent people save. To those who earned the money the two categories are equally savings, in the sense that they represent abstention from current consumption.

The remarkable fact is that, under present arrangements, virtually no interest is paid on the first quantity, the compulsory savings of working people, while the voluntary savings draw as interest all that the economy provides in the way of return to capital. The concept of social security has so fascinated two generations that this huge inequity has gone unnoticed. At one time the issue did not arise because working people did not save much; now, in the aggregate, their social security contributions are 70 percent as much as the total voluntary savings in the economy. The purpose of this article is to show how it comes about that working people are compelled to lend their savings without interest and what are the consequences of this fact.

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We slid into this condition, not gradually, but at a specific moment in time. That was when President Franklin Roosevelt signed the Social Security Act of 1935 and began a process that led to an apparently free gift of old-age pensions to millions of Americans. A worker who was 65 years old in the early 1940's could receive about $1,000 a year for life, after having paid a trifling amount in premiums. That—unlike the winnings in a sweepstake—this gain was free of tax, added to its popularity. Yet it turns out that this one-time gift to the people then of retiring age has had enormous costs subsequently, and Americans may well have to pay for it to the end of time.

To understand both the inequities and the financial difficulties of social security we have to examine the nature of the transfer payments involved. Once we realize what is wrong with the present system it will be seen how old-age security should have been handled. Starting out right would, among other advantages, have prevented a serious difficulty into which the United States has fallen —the shortage of investment funds—as well as avoided the inequity between wage earners and owners of capital. Correcting the arrangement now is a different and much harder problem.

Actuarial reserve systems

In principle there are two ways in which the working population can provide for its old age: having each *cohort* pay for itself, and having each *time period* pay for itself. The distinction requires elaboration.

In an actuarial scheme each individual saves, and secures the expected benefit of that saving. A substantial fund is built up during the person's working life, draws interest at the market rate, and the accumulated fund provides the pension. The calculation is in terms of expected values, and the premium depends both on the life expectancy of the individual and on the prospective rate of interest. The age distribution of the participants makes no difference to the scheme, since each person's premium is separately calculated.

Looking at such an arrangement from a demographic point of view, one can say that the unit which the actuary counts on is a cohort of lives—i.e., a number of people all born in the same year. The survivors to each birthday are estimated from a life-expectancy table, and if the cohort is of reasonably large size, and there are no serious epidemics, its mortality will be close to the life table drawn

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up on the basis of earlier experience. Its net premiums are the right amount that they can accumulate during the time people work, gather interest, and then be disbursed after the cohort retires. In principle, the fund will be exhausted just as the last member of the cohort dies.

To show the effect of interest in reducing the cost of premiums paid, think of a pension of $100 per month starting at age 65 for males. If there is no interest, the monthly payment of those working has to be $25.36 starting at age 20. With money gathering 3-percent interest, the amount they have to pay per month is only $9.13! When interest is received, the cost is only a little more than *one-third* as much as without interest.

The difference between $25.36 and $9.13 is typical of the effect of interest in actuarial calculations. It is based on a life table for males with expectancy of life at birth of 71.2 years—slightly higher than so far attained, but probably not much different from what men now alive will experience. The rate of interest of 3 percent is modest compared with present rates; 3 percent was about what was paid on government bonds in those times, long past, before inflation. One can note how drastically the cost would go down with a higher rate of interest—a rise from 3 to 5 percent lowers it from $9.13 to $4.36 per month.

For women the difference arising from interest is even greater, as a result of women's greater life expectancy. In the corresponding life table, with a life expectancy at birth of 75 years, the premium without interest is $30.46, with 3-percent interest is $10.82, with 5-percent interest is $5.13.

The great reduction in cost arising from interest applies whether one saves for his own old age by buying stocks and bonds or by having an insurance company do the investing for him. The advantage of the insurance company is in avoiding the risk of outliving one's savings or, on the other hand, of accumulating an unnecessarily large nest-egg, plus any advantage in more effective investment arising from the larger units.

We turn now to the alternative arrangement for providing financially for the older population.

Pay-as-you-go

In the national scheme of the United States and most other industrial countries, each year's pensioners are directly paid out of the taxes obtained from the current year's workers. The premium

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or tax is calculated in such a way that at the end of the year very little is left over. To simplify, if the pensions are to average one-third the wage of those working, and if there are four times as many working as there are on pension, then the administering agency will have to collect one-twelfth of wages.

Such national schemes are simple transfers, year by year, from the working to the retired population. Their reserves are not intended to build up an actuarial fund, but suffice only to ensure the cash flow for the months ahead. The total of the U.S. social security trust funds at the beginning of 1978 was about $50 billion—a few months' disbursements. Since the payments into the scheme are mostly spent as they come in, those who pay can obtain their own pensions only from the generation that follows them. The arrangement is sometimes referred to as an implicit "contract" covering such intergenerational transfers; the second generation's payment to the first gives it a claim on the third.

If the population and wage rates are stationary, then premiums under pay-as-you-go would be exactly the same as funded premiums calculated at zero rate of interest. And, of course, under such stationary conditions the funded premium with 3-percent interest is one-third of the pay-as-you-go tax.

What made pay-as-you-go so attractive in the initial period was that it "blanketed in" the retired people of the moment. The payments of people of working age were collected, but instead of being put into a reserve that would fund *their* pensions, they were spent on the people then in need of pensions. This pre-emption of the reserve for the immediate need was justified to those whose money was being given away by a promise that they would be compensated from the money of a later generation. The need was genuine enough, and the payments to the partial or non-contributors thoroughly desirable; what was wrong was the way of financing that one-time cost.

Abstractly considered, pay-as-you-go has elements in common with a chain letter, though the time scale is different. In a chain letter a recipient sends one dollar to the name at the top of a list of, let us say, four, then deletes that name, writes his own name at the bottom, and copies and sends the letter to four new people. If a week suffices for each mailing, and everyone follows instructions, then at the end of four weeks the new entrant's name has worked up to the top and he receives $4,096. If the same thing is done with 10 names in each mailing, then the participants will have to wait 10 weeks, and at the end of that time each receives $10

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billion. The trouble with any such scheme—and the reason it is illegal—is just what is wrong with pay-as-you-go pensions: it runs out of people.

The unit time period for social security is not weeks but generations. To simplify: the social security law is enacted, and a man of 70 then alive is provided with social security by taxes levied on the salaries of men of 45. Suppose there are four men of 45 for each one of 70. Suppose also that the pension is one-third of the wage. Then each of the men of 45 has to pay one-twelfth, or 8 percent, of his wage. Now 25 years have passed; the men originally 45 are now 70, and they draw pensions from the third generation. And so the pyramid continues to build. It looks as though no one has to pay for the gift made to the original beneficiary of 70 with whom the scheme started; "blanketing him in" seems natural and essentially costless.

If the population were to keep increasing at the same rate, this would be substantially true: In every generation there would be four men of 45 for each man of 70. But the conditions of the 1930's were a very special configuration that was not to be repeated even one generation later. The many immigrants who came earlier in the century had not yet reached retirement age. Over a million entered in the year 1913 alone, and the immigrant of age 25 in 1913 was still within his working years in 1935. Mortality was considerably higher than it is now, and a considerable proportion of the native- as well as foreign-born would not live to benefit from their contributions. And, most important, the people paying for the scheme were the birth cohorts of around 1900; those benefiting were the cohorts of around 1870; despite some fall in the birth rates, and simply because of overall population growth, the later birth cohorts were greater than the earlier.

For reasons having nothing to do with pensions, none of these three conditions can continue. The country was not ever again to record a million immigrants in one year; mortality has improved; births do not keep increasing. All three of these shifts tend to raise the ratio of retired persons to workers. And so the bill is presented for repayment of the original gift which was made to the oldsters of 1935.

The effect of demographic changes can be summarized in a simple index: the ratio of persons 65 and over to those 21 to 64. In 1950 this was 14.4 percent, so that a payment of $100 a month to those 65 and over would cost those 21 to 64, $14.40 per month each. By 1970 the ratio had risen to 19.3. From that point it will remain

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nearly level to the end of the century, being prevented from rising as the post-World War II baby boom passes through working life. In the first quarter of the new century, however, these same people retire, and our ratio rises from 20.6 percent in the year 2000 to 31.2 percent in 2025, which is likely to be its long-term level.

Pre-industrial peoples living largely in a non-money economy depend on their children for old-age security. The more children a couple have, the better they will be looked after in their old age—provided the children have access to land and other means of production. The incentive to have many children is strong. Such an incentive does not appear among us because the dependency relation is collective, for the country as a whole, rather than applying to each individual family. Yet, one effect in the pre-industrial society does apply in ours, but in an aggregated form: Those cohorts that average many children will be more easily taken care of in their old age than those with few children.

A large number of children will have an easier time supporting their parents than a small number. When the matter is collectivized and the burden falls, via the tax collector, on an entire nation, the ups and downs of family size have painful financial effects. They can set up bitter conflicts between generations. So it is not surprising that increasing costs have brought old-age pensions urgently to public attention. The situation is discussed under the heading "The Pension Mess" in a representative article in *Newsweek* (February 26, 1979), and *The Wall Street Journal* (June 4, 1979) speaks of a "shaky system." "Social Security Faces a New Round of Trouble as Complaints Increase," reads the headline, "Congress is Under Pressure to Roll Back Tax Rises." Those who have the option stay out of the system; Alaskan public employees have just withdrawn from it.

Reserves and interest

The size of reserve needed depends on the rate of interest that will be earned, as well as on the life table. A piece of algebra that need not be repeated here shows that, for a stationary population, the amount of reserve per participant at any moment is equal to the difference between the pay-as-you-go premium and the funded premium, divided by the rate of interest. We saw that with 3-percent interest and a stationary population the difference in monthly premium per $100 pension per month for males is $25.36 – 9.13 = $16.23. The rate of interest per month is 3/12 percent = 0.0025;

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dividing $16.23 by 0.0025 gives $6,492, and this is the reserve per male participant. For females the reserve would have to be larger: $30.46 – 10.82 = $19.64, divided by 0.0025 is $7,856, again per $100 per month of pension.

The amount of reserve is less, the higher the rate of interest. Thus taking the female calculation above, the $7,856 with 3-percent interest drops to $6,264 with 5 percent, again averaged over a stationary population with a life expectancy of 75 years.

To see the aggregate amounts involved in a universal old-age insurance scheme, think of a pension of $100 per month as the unit, with its average reserve in a stationary population of about $7,000. For the covered labor force of the United States the total would be 80 million times this, or about $600 billion. This is a very large sum, almost equal to the national debt. For a $300 per month pension, which is about the average present social security level, the sum would be over $2 trillion, and this is the order of magnitude calculated by Martin Feldstein (*The Public Interest*, Spring 1977) and officially by the Social Security Administration. Such an amount approximates the total value of all stocks, shares, and bonds in the country. The assertion has been made that this eliminates the possibility of a reserve scheme for the bulk of the workers.

But if not everyone can have the help of earnings through interest to strengthen his saving for old age, the question becomes: Who ought to be allowed to take advantage of the going rate of interest, and who ought to be required to save for his old age without interest? Should we accept that the workers, a large fraction of whose saving is through compulsory social security, should be discriminated against in the degree that zero interest now discriminates against them?

Wealthy people are privileged to seek the highest rate of interest the market affords, while the working man or woman is legally required to participate in a pension scheme that under stationary conditions, gives him back only what he paid in. He pays a social security tax on his wages, and waits up to 40 years to collect benefits that, on the average, amount to that same tax being returned to him. The rich man (or more affluent worker or professional) who puts his money into 3-percent bonds and waits 40 years, draws $3.26 for each dollar he saved.

Of course workers can save and invest in the free market under present circumstances, but before they start to do this, their social security tax of over 12 percent has to be paid. For most, that leaves very little of their wages available for investment. It is in this sense

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that compulsory pay-as-you-go pensions make investment a preserve of the more affluent. Keeping the working class out of it enables the affluent to have higher rates of return than they would have if they had to face the competition of the savings of the poor.*

It is tempting to see the social security scheme as a device to hold down investment funds in the economy, so that those who have large individual holdings will not be subject to competition for investments. By keeping funds collected under social security out of the market, private investors can obtain larger returns than they would get in a more competitive regime.

Yet no one seems to have had this in mind in legislating pay-as-you-go. The investors who benefit do so incidentally. What brought pay-as-you-go into existence was the lower initial cost. In 1935, to provide for the existing older population out of general taxes would have meant a large initial burden. It is true that, after a generation, social security costs would have fallen as the initial old people were replaced by those who had accumulated their own pensions with the help of interest, and premiums would now be much lower. But this distant gain apparently did not weigh as heavily upon the politicians and planners of that day as did the immediate expense.

The decision to make things temporarily easy at the cost of applying a wrong principle was not made once and for all, but repeatedly. Successive increases in the social security benefits have been legislated without corresponding increases in contributions, so that even what provision for reserve did exist in the original scheme has now been eliminated.

That free gift to those blanketed-in a generation ago has been and will be paid for by everyone from then on, to the end of time, losing the interest on his money that is a matter of right to individual savers who provide for themselves outside the social security scheme. This could be hidden for a while by what might be called the chain-letter effect, but that advantage disappears as the population becomes stationary. If, today, by paying over to the government an amount of $5,000 per $100 of pension, a worker could escape from the social security scheme, he actually would be striking a good bargain! The ordinary wage earner is not allowed to escape because he has to cover the original giveaway to those originally included.

* This is a complex and technical matter, whose analysis requires a distinction between entrepreneurs, who benefit from abundance of capital and consequent low interest rates, and owners of capital, who want interest rates to stay high.

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A common defense of the social security scheme is that, however costly, it does force the workingman to save for his old age. Without it he would be dependent on the generosity of his children or on public charity. That argument may well have applied to the half-starved laborer of the early industrial revolution; does it still apply to the working people of our more affluent, post-industrial society? To assume it does, to suppose that the worker is incapable of anticipating his old age, is to treat him as an immature dependent, who does not have the good sense to provide for the future when he is well able to do so. From the point of view of his independence alone, the workingman could well want out of the scheme, quite aside from the fact that it must look to him like an interest-free loan to the authorities.

But economists, who in other contexts insist on the advantages of free choice, are not inclined to press the matter here. The individual faced with a short-term benefit (spending the whole of his wage now) and a long-term one (having sufficient funds to live on in his old age) may well opt for the short-term advantage, and then live to regret it. Most people agree that mandatory universal provision for old age is desirable. *But that by no means requires pay-as-you-go pensions.* Legislation could simply require that all wage earners set aside in some kind of trust a certain minimum fraction of their earnings. The trust would be irrevocable, say until age 65 or earlier disability. It could be held by a private insurance company or some other institution, and so be inaccessible to legislators who might be pressed to divide it up for the short-term gain of their constituents.

Though pay-as-you-go is not workable unless it is mandatory, a mandatory scheme need not be pay-as-you-go.

Inflation, savings, and the economy

In 1972 Congress provided for automatic increase of pensions in accord with the Consumer Price Index. (In fact, through a technical error it went beyond that, as Martin Feldstein has explained, and only this year has the error been rectified.) Since the old-age pension is indexed to prices, it may be thought of, not as money, but as an annuity of consumption goods. Given this, the proper rate of interest for comparing the two means of paying for it is the nominal rate less inflation. This is not readily calculated. The real rate is a relatively small difference between two large quantities, which is always a handicap to accuracy, and of the two large quantities,

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one, the rate of inflation, is not knowable at the time one buys a bond or makes a loan. Under inflation the real rate of interest can only be known after the event, when the books are finally closed.

Inflation confuses all prices and makes possible a much wider range of rates of interest than was to be found when we were on the gold standard. The government bonds that then paid 3 percent both nominally and in real goods set a very visible norm. Now the real rate of interest is hidden, and since it cannot be specified in advance, banks can offer negative real interest on savings while other borrowing goes on at very high real rates.

This confusion on the real rate of interest also confuses thinking about social security. People argue that, since their own stock market investments have been unsuccessful, present social security is as good as any way of providing for old age. The fact that the money collected in one year is disbursed in the same year enables the scheme to increase benefits in proportion to inflation.

Thus the existing social security scheme essentially transacts in dollars of constant value, while any funded scheme would work in nominal dollars. It is said that nominal interest of even 12 percent does not guarantee a positive real interest rate, and so a funded scheme is more costly than pay-as-you-go. This conclusion cannot be correct. It supposes that there is no real return on capital, that increments of capital usable in production are not worth anything. If that were true people would be giving away their shares of General Motors and IBM. The returns to capital in the economy are well over $100 billion; surely some part of this could be made available to reduce costs of old-age security for working people, and not be held entirely in the accounts of voluntary savers.

If unpredictable and very high rates of inflation are to continue in the future, then not only funded old-age pensions but every kind of long-term contract becomes impossible. With the runaway inflation of Argentina or Turkey, the individual cannot save towards his old age; money becomes useless for this and other long-term purposes. Pay-as-you-go is then the only way—the money taken from contributors to be immediately spent by the old people before it can lose value. If this is what we are into, then things are very bad, in a way that goes beyond social security.

Yet even abstracting from both inflation and population increase, present social security might give the contributor more back than he put in. If wage rates go up, then so will the social security tax collections, these being set at a fraction of covered wages. The scheme could afford to disburse enough to give contributors a rate

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of interest equal to the increase of real wages. Unfortunately real wages, like the population, have been nearly stationary. But stationariness causes neither interest payments nor profits to disappear, and a funded social security scheme would draw its share of these, and so relieve wage earners of much of the $95 billion now paid in social security taxes.

Pay-as-you-go directly holds down savings. Martin Feldstein has developed this point authoritatively in two articles in *The Public Interest,* in 1975 and 1977. That people have assurance of the first $300 or so of pension causes them to save less than they would without this assurance. They may be less in a hurry to pay off the mortgage on their home; they may go more willingly into installment debt. At the same time, private pension reserves are not a net addition to the nation's saving. The consensus among those who have looked carefully into the matter is that private pensions increase the total asset accumulation of the covered employees but by less than the full actual value of the pensions.

Although this is a complex subject, it is at least arguable that a capital shortage now exists in the United States. Personal saving is about 5 percent of personal income, and net private investment is only about 7 percent of the net national product. In Japan net private investment is close to 20 percent; in Germany close to 12 percent.

Gross investment (including replacement of depreciated capital) is an alternative indicator. The World Bank shows industrial countries as a whole at 23.4 percent for 1973. At the top is Japan with 39.9 percent, and near the bottom are the United Kingdom with 20.1 percent and the United States with 18.7 percent. Since 1973 the United States has fallen further.

As among countries, productivity correlates with investment. United States Department of Labor figures show for the United States a productivity increase of 27 percent in the decade 1967-77, compared with 70 percent for Japan. The only country near us is the United Kingdom, also with 27 percent.

Capital available per worker is bound to affect production per worker. Burton Malkiel, studying the levelling-off of productivity growth in the United States during the past few years, refers to the 1979 report of the Council of Economic Advisors:

> One important reason for our poor productivity performance is the weakness of business fixed investment over the past several years. From 1948 to 1973, the amount of capital stock per unit of labor grew at an annual rate of almost 3 percent. Since 1973, however, lower rates of

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> private investment have led to a decline in that growth rate of 1.75 percent. . . . Thus our industrial plant has tended to age, and labor has had to work with increases in capital goods that are well below those of past years. The result has been a decline in measured productivity growth.

Shortage of capital funds is not our only difficulty. For various reasons, including inflation and other sources of instability, there is more risk in undertaking new commitments. The greater risk raises the minimum expected return on which investors insist before they put their money down. Such considerations limit the amount of capital that will be freely invested. Nonetheless, the low investment ratios of recent years leave many places where the free enterprise system would place capital if rates of interest were lower. Judging from the experience of other countries and our own past, we could use considerably more savings before we ran into the Keynesian barrier of unemployed labor and capital.

Arithmetically identical, socially very different

Simple algebra suffices to show that the premium under pay-as-you-go for a wage bill increasing at a certain rate is identical with that under a funded scheme with the same rate of interest. Thus pay-as-you-go in a population increasing at 1 percent per year and with wage rates increasing at 1 percent is identical with the premium for a funded scheme if the fund is invested at 2 percent. Pay-as-you-go is especially attractive when each generation is larger than the one before.

Though the two premiums are arithmetically identical, there is a world of difference between reaping the advantages of an increasing population and of interest on capital invested. The increasing population soon comes to press on the environment and on sources of supply, so that everything becomes more expensive and less comfortable. The drawing of interest on invested capital, on the other hand, resulting from that capital being put to work, at least up to a certain point increases employment and raises the real income of the community much beyond the interest drawn by security holders.

An important feature of a funded scheme is that each cohort looks after itself. A decline in the birth rate makes it not a whit dearer to provide for the old. Their support in no way depends on the increase of the population, on what might be called the chain-letter effect. Any cohort can increase the amount of pension,

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or diminish it, without injustice to anyone, as long as it correspondingly modifies its premiums; indeed individuals can suit their own requirements. With pay-as-you-go, changes in the conditions for one generation generally do an injustice to other generations. The prospect that we now have of waves of births, with large and small generations oscillating around the replacement level, that is so awkward for pay-as-you-go, is a further argument for a funded scheme.

The problem of the increasing costs of pensions on the present scheme will not go away, but one can try to dodge it. One way to dodge it is to combine it with other questions. It can be said that we should not worry about the costs of pensions in the year 2025 because our children's children will be so rich that the price will be easily borne however high it may be. Or else that parents pay an average of $50,000 per child in upbringing costs, so why cannot the same child bear the $30,000 or so pension collectively paid over to parents?

One can make the question of inter-generational equity as complex as one likes. If we save less and spend more, our children will not be as rich as they otherwise would be—though they will in any case be richer than we are unless things go very badly. The issue can be expressed in physical terms—if we build more solid houses, though they are smaller, we are extending their utility over time. On the other hand, our efforts to help our children by bequeathing them more durable artifacts may be vain if tastes change greatly. Certainly we help our children by consuming a smaller amount of nonrenewable resources, all other things being equal.

But it seems better to keep the issue of pensions simple by taking it in a narrower context, and especially by focusing on the right of contributors to interest on their premiums and the need of the American economy for investment funds.

What should have been done?

When any pension scheme is started, the people who are already of drawing age or near it present a problem. Up to the day the act is passed their condition has been regarded as acceptable; now it is seen as intolerable and must be remedied quickly—within five years, in the case of the Social Security Act of 1935. Of course this is only a convention of practical politics: Concern about the position of the old could start to manifest itself cohort by cohort rather than for all the people existing at one moment. But given the realities

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of politics we need a solution to the problem of providing for those who are old at the time of new legislation.

But the solution should not be one that lets the one-time problem determine the old-age security system for centuries ahead. The old and near-old at the time should be recognized as a separate issue, a one-time cost of getting started. Since the initial premiums in 1935 were set at 2 percent of wages, there was room for a tax on wages, or another kind of tax, to cover the one-time cost. Moreover, any one-time expenditure can properly be met by borrowing. The amount would be large, but with prudence the loan could be liquidated over a generation or two. Borrowing and repayment do represent an inter-cohort exchange, and the sooner liquidated the sooner each cohort can be independent of the others. If that had been provided for in the 1935 Social Security Act we would today have a drop in contributions rather than a rise.

Such juggling cannot reduce the cost of anything, but it keeps the accounts straight. One knows that an initial giveaway has been made, one knows exactly its cost, and one can make plans to liquidate it within a specified time. Bonds to be repaid out of general revenues are as legitimate for this one-time cost as bonds for building a dam whose benefit will be reaped over many years in the future.

Once this start-up cost has been separated out, the remainder of the scheme can continue indefinitely, with each cohort paying for itself and getting as much interest as the market permits. It is true that, with such large funds seeking investment, interest rates would fall, but that would be generally beneficial. Funds might he hard to invest in the quantity required, but at least the national debt is available for this purpose. It would have been easily capable of constituting the reserve for the first $100 per month of pension; if the bonds were sold to the fund, the interest (paid out of taxes) would now be going toward the retirement of working people, instead of to anonymous bondholders.

When the social security scheme was set up it would have been perfectly possible to do things right, treating the old people of the time as a separate problem and borrowing to provide them with some level of old-age pension. But it is half a century too late to think of that now. We cannot say that the old scheme must stop in 1979, since the present old-age pensioners paid their premiums in good faith and are now legally and morally entitled to their annuities. The system started with a stroke of the pen, but it cannot be so terminated without grave injustice to the generation now

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drawing or about to draw. Yet the continuance of the scheme is a grave injustice to all generations of workers, in that everyone is in effect lending his money without interest.

Can the error be rectified?

Changing to some other method requires compensation to the generation now about to draw, whose contributions have all been spent. This would mean an immediate rise, not a fall, in taxes. Ultimately the funded method is cheaper because it takes advantage of interest, but interest is only accumulated in the course of time. Were we to "pay off" the current generation of elderly or near-elderly through increased taxes, in a sense we would be paying off a long-term loan that was incurred for the pensions of the first generation back in the 1930's and 1940's. We could have far more easily afforded to make that repayment when the social security tax was 2 percent than now when it is over 12 percent—but that is water over the dam.

The public would have to understand that the rise in taxes is not capricious, but a businesslike attempt to rectify a past error. People would know that the premiums they paid on the new scheme accumulate like a bank account. It would be explained not only that the apparent cheapness of the previous scheme rested on a fallacy—that population would go on increasing forever—but also that the country needs the investment funds that the new and correct scheme provides. Unlike the old scheme, it would be made clear, the funded new scheme would give to working people the return in interest on what they set aside for their old age that the more affluent have enjoyed all along.

It may be impossible to change from pay-as-you-go. Perhaps the original giveaway has to be paid for by retention forever of a system that foregoes interest, in which saving in the economy is inadequate, in which it becomes less and less possible to play the chain-letter game, and so taxes keep rising. Pay-as-you-go could be a trap in which the payments by each generation commit society to continue in the same way with the generation that follows, and so on *ad infinitum*. Certainly there is no fair way of buying ourselves out of this trap without a rise in social security taxes, temporary but extending over half a century or more. It may well be that no generation will want to pay such a price, however great the benefit to all later generations.

But several kinds of partial escape are possible. Benefits could

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start at age 65 or higher rather than age 62 for those not disabled. This would help in two ways: by continuing contributions longer and shortening the period when payments are made. Or else benefits could be based on the wage levels during the retiree's career, rather than on the level just prior to his retirement, as is now done. Or the pension could be subject to income tax, which it is not at present. For the retiree who has nothing but his social security this would cost virtually nothing; those who are middle class or better would make substantial contributions to the federal treasury.

On present policies we drift in the wrong direction, away from funded schemes and towards more pay-as-you-go. The official Retirement History Study recognizes this. "The private pension benefits of retirees increased slightly during the first half of the 1970's, but their purchasing power declined sharply because of large increases in the inflation rate. Social security benefits, on the other hand, rose substantially more than the CPI [consumer price index] in the same period." As a result of this, "private pension amounts declined as a percent of total retirement benefits."

Peter Drucker saw the advantages of private saving for old age and rightly praised the voluntary pension schemes. By 1975 private schemes attained a contribution level of $30 billion, up from $5.5 billion in 1960. These do have all the advantages for the individual and the economy that we have pointed out for the funded approach. It is true that they have some difficulties, like the loss of rights for those who change employers, but through the Pension Reform Act of 1974 Congress attempted to remove these injustices. What it did not do was expand the schemes; if anything, its safeguards discouraged them. Contributions to private pensions went up fivefold between 1960 and 1975, but social insurance went up nearly ninefold. The $30 billion of private schemes compares with $90 billion of social security, and the relative position of the private funds is declining, so it is too much to declare, as Drucker does, that private schemes "socialize the economy," that through them "socialism has come to America."

Given that voluntary savings do not appear adequate to supplement present social security, the choice for expansion of retiree income is between making the present scheme bigger and having a mandated private scheme. The private scheme would in general be operated by the employer, typically through an insurance company, and would be funded with a proper reserve.

There are signs that European countries, who were the first to take up pay-as-you-go, now see its limitations. Increases in pensions

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beyond price rises are being taken care of by a funded layer. Reports Max Horlick in a recent issue of *Social Security Bulletin*:

> In the Netherlands and in Switzerland, the concept of a mandatory, occupational, private pension system has been accepted, but the details have yet to be worked out. In Britain, the law establishing the quasi-mandatory system [permits] employers [to] come under the second layer through a Government-operated system or through 'contracting out.' In Sweden the private pension layer is already operative but is not fully mandatory; nevertheless, all employers belonging to nationwide federations must establish such plans.

Such mandated reserve plans are especially appropriate for the United States. There is no need for the government to hold the reserve; the law would require only that the reserve somehow be set aside. To put the reserve in the hands of the government would subject it to political pressures; it ought to be in the hands of private financial intermediaries, even though in the nature of the safeguards imposed on these much of it would be invested in government bonds. Yet, despite the overwhelming case for private and funded schemes, William C. Greenough, Chairman of the Teachers' Insurance and Annuity Association, says:

> [T]here are those in the government and elsewhere today who suggest that the solution to the serious financial problems of Social Security could be achieved by taxing or abolishing all private pension plans. . . . [T]he government regulates and has the power to tax. But it also competes. Having already achieved its proper objective of providing satisfactory benefits for moderate needs, Social Security is starting to squeeze out the private pension sector.

The advantages of a mandated, funded supplement

My main proposal is that further increments to social security be *not* in the form of more of the same pay-as-you-go, but of a mandated *funded* provision for old age. Individuals would have wide choice of the manner of their saving, as long as it was secure and irrevocable, with the law merely decreeing a lower limit on what they set aside. The saving would commonly be through the employer, who would collect premiums and have a group policy with a standard company; what could not be permitted is leaving the funds with the employer, whose use of them in his own business would be an unacceptable risk.

No one can say just how much such a mandatory funding would add to net national saving—less than the actuarial reserve, one must assume. Because of substitution among kinds of savings, peo-

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ple forced to save in this way would save less in other ways. With the increase of saving there would be a decline in interest rates, and this would lower voluntary savings. But the net addition would still be substantial.

With increased savings more venture capital would be available, and the competitiveness of the economy would be increased. New establishments would come into existence in many industries, and existing establishments would have more possibility of expanding into competition with IBM or Dupont. And all this would not be seriously inhibited by laws governing the investments of pension funds; even if these were restricted to government bonds, they would have to be bought from private holders who would then seek other outlets for the receipts. There would be a genuine widening of ownership of the economy—the advantages seen by Drucker would take place on an increasing rather than diminishing scale.

It has been argued against the expansion of existing pension funds that they concentrate too much economic power in insurance companies, trade unions, and other intermediaries. Such an argument is spurious, for it disregards the power held by existing owners of capital. To increase the power of the holders of the new funds would increase competition with the old holders of funds. The new actors on the economic scene would divide power with the old actors—thus a dispersion of power, not a concentration.

Were it not for the original defects of the social security scheme, we could now have a falling social security tax rather than a rising one—*if* we had borrowed and repaid out of general funds for the one-time cost of the people of drawing age at the start. Feldstein has made depressing estimates of the amount of saving lost to the economy and hence the amount by which productivity and wages are now lower than they would be with a funded scheme. The device of pay-as-you-go gives people a claim in lieu of saving, and so reduces saving below what the economy needs. The pension is more costly to working people than it would be if, for at least some part of their protection against old age, they could get the benefit of interest. Too little attention has been given to the sheer inequity of working people obtaining no interest on what amounts to a forced loan, while the rich are free to draw all the interest they can get. It is almost as though the liberals promoting social security had wanted to sterilize workers' savings, to keep them out of capital markets. And aside from the financial injury they suffer, working people are kept from the participation through ownership in American industry that would increase their identification with it.

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Sex Education: Another Look

PAUL V. CROSBIE

AFTER a decade of relative calm, sex education appears to be in for a new round of assault. Recent months have witnessed numerous signs of renewed anti-sex-education sentiment. George F. Will has criticized sex education in his nationally syndicated news column; Ronald Reagan has assailed sex education on his syndicated radio show; Senator Jesse Helms has criticized sex education on the floor of the U.S. Senate; ABC-TV has televised a debate on sex education on its *Good Morning America;* and reporters for both CBS-TV's *60 Minutes* and the *National Enquirer* have begun investigations of selected sex-education programs.

As welcome and as deserved as criticism of sex education may have been in the past, it is neither so welcome nor so deserved today, largely because it is misinformed. Virtually all of the critical sentiment cited above has been stimulated by a single source, an article by Jacqueline Kasun denouncing sex education ("Turning Children Into Sex Experts," *The Public Interest,* Spring 1979). Kasun's article is pregnant with exaggeration, half-truth, innuendo, and errors of omission. Jacqueline Kasun creates her own particular image of sex education, but her image is a false one. Nevertheless, Kasun does succeed in inciting the fear and indignation of many of her readers. And before this sentiment builds too large, before it begins to impair sex-education instruction, we had better take a close look at what Kasun has done and at what sex education does mean in American schools.

Most of the examples used in Kasun's article were drawn from a single sex-education program; this is the K-8 program in the Arcata School District, Arcata, California. Jacqueline Kasun flagrantly misrepresented this program. The Arcata program was begun in 1976, at the request of a group of PTA parents. The design of the Arcata program was solely a community effort; it was not, as Kasun suggested, a conspiracy by HEW, the Sex Information and Education Council of the U.S. (SIECUS), and Planned Parenthood "to use the schools to mold minds in the direction of a new morality which claims that . . . sex should be freely and widely enjoyed." A first draft of the Arcata program was drawn up by a group consisting of parents, teachers, school administrators, school nursing personnel, and a school-board member. Upon completion, this draft was submitted

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for revision and review to the entire school staff and to a randomly selected group of 25 parents. The program was revised and was then submitted and approved by the school's Board of Trustees.

The Arcata program is very definitely designed to encourage "family unity and moral values." As specified in the Arcata curriculum guide, students in kindergarten through third grade (from ages 5 to 8) are to be taught "to recognize the family as a basic social institution and to understand the importance of successful family life for the individual and for society." No special periods are devoted to this instruction, rather, the instruction is incorporated into other areas of learning such as health, social studies, and reading. The students are introduced to animal reproduction (for example, watching chickens hatch from incubated eggs), but nothing is said of human reproduction. Students in grades four through six (from ages 9 to 11) continue to be taught the importance of the family in society and, in addition, are given light instruction in the biology of human reproduction and development. This additional instruction is covered in a two-to-three-day period for up to an hour and a half per day and requires written parental consent for enrollment. These kindergarten through sixth grade programs are hardly controversial, and, in fact, Kasun did not directly criticize them in her article (though she did disparagingly refer to their "precocious intensity"). The bulk of Kasun's criticism was directed at the seventh- and eighth-grade curriculum.

The curriculum for those grades (ages 12 to 13) recognizes that these students have reached or are reaching puberty, that they will have questions about themselves and their own sexuality, and that they will increasingly be exposed to peer information and peer demands regarding their sexuality. Thus, in addition to the emphasis on family unity and moral values, an important objective of the seventh- and eighth-grade instruction is "to help the child cope with physical, psychological, and social changes of sexual development by providing information and by encouraging personal responsibility, self respect, and respect of others."

The seventh-grade instruction examines the physiology of human reproduction; the social, psychological, and biological influences on human development and behavior; the life problems confronted in adolescent development; the problems adolescents may experience with their family members; the need and techniques for resolving family problems; and the need for the student to begin to assume responsibility for his/her own decisions and behavior.

The eighth-grade instruction considers the student's need to develop a sound ethical and moral value system as a guide in directing his/her own behavior; the student's need for a healthy moral adjustment to the adolescent sex drive; the range of community beliefs (social, religious, developmental, legal) and available evidence relating to the practice of adolescent sexuality, masturbation, and homosexuality; the possible consequences of adolescent sexuality, including venereal disease and the risk of pregnancy; the counseling

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services, including abortion counseling, available in case of pregnancy; the need for the student to be responsible for his/her own sexual conduct and not to succumb to the influence of peer pressure; the advantages and disadvantages of early parenthood and the demands of parental responsibility; the need for the student to examine and to sort the values relating to his/her own life goals and life plans; and the need for the student to develop his/her own personal standards of sexual behavior, including the right to say *no.*

Both the seventh- and eighth-grade curricula consume less than 1 percent of the student's yearly educational time (45 minutes per day over a four-week period). And the program is closely safeguarded by State Board of Education guidelines: Program teachers receive specialized training; student participation is entirely voluntary and dependent upon written parental permission; parents of eligible students are given the opportunity to review the curriculum guide and all materials used in the program (two periods, one day-time and one evening-time, are provided for parental review, and parents are notified by mail well in advance of these); and the program is monitored by the Board of Trustees.

This is the program from which Jacqueline Kasun drew most of her examples, the only operating program of which she indicated any knowledge. This is the program that generated many of Kasun's fear-provoking claims, charges such as:

> The instruction makes it clear that the source from which the person obtains [his/her] . . . pleasures of sex—whether from marital intercourse or from masturbation or from homosexual relations—is entirely a matter of personal preference. . . .
>
> No religious views, no community moral standards are to deflect him [the student] from his overriding purposes of self-discovery, self-assertion, and self-gratification. . . .
>
> [One curriculum guide suggests] that persons who want children must, at the least, be socially inadequate, and, more probably, psychologically deranged. . . .
>
> Another noteworthy feature . . . is its emphasis on separate individual sexual gratification, rather than on sex as an interpersonal act.

THE Arcata sex-education program was very conscientiously designed, by parents, educators, and community members, to teach children basic familial and moral values; it was not designed to turn children into sex experts or sex perverts, as Kasun implies. Kasun manipulates readers' fears with charges of perversion. She uses the terms "masturbation" and "homosexuality" seven times each in the first four pages of her article; this is completely out of proportion to the attention given these subjects in the Arcata curriculum. Neither subject is mentioned at all in the seventh-grade curriculum. Eighth-grade students are presented with approximately a 15-minute discussion of masturbation. This discussion does not teach, encourage, or have the student "participate in a class debate" on masturbation;

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it does review the various community philosophies (traditional, religious, neutral, and radical-supportive) regarding masturbation. Eighth-grade students are also presented with approximately a 15-minute discussion of the issues involved in homosexuality. This discussion does not encourage or teach homosexuality or achieve "the movement's goal of separating sex from reproduction." The discussion of homosexuality does review the various theories (social, religious, developmental) of its origin and does address the various meanings of "masculinity" and "feminity." The discussion is so pure, it's doubtful that even Anita Bryant would be offended by it. The students are not, as Kasun suggests, shown "films" of homosexual couples, and they do not "engage in role playing about homosexuality and take tests on it." Arcata children do not need to see films of homosexual couples in their schools—they get that exposure on the cable-TV news from San Francisco.

Kasun over-emphasizes community resistance to the Arcata program and under-emphasizes community support. Kasun charges that "parents report . . . that they receive so little information about the times and nature of the instruction that they are unable to send their requests [to exempt their children from the classes] at the right times." In fact, the school nurse who coordinates the Arcata program has received no complaints from parents about problems of exempting their children from sex-education classes—nor would she, since students are automatically exempted from the classes and must have explicit, written permission from a parent to be enrolled. And in the last (1978-79) school year, the parents of 206 out of the 214 eligible seventh- and eighth-grade students did give their written permission for enrollment.

When Kasun departs from the Arcata program to cite experiences and literature in support of her accusations, her citations are often out of context and clearly misleading. Kasun attended a class for parents and sex-education instructors given by the county health department; throughout her article she implies that activities of this class were actually directed at students. Similarly, she cites literature designed for sex-education instructors, implying that the literature was meant for students. The citations themselves are less than accurate. For example, she quotes from an article by James Maddock to support her contention that homosexuality receives "thorough and sympathetic treatment in the new sex curriculum." In fact, the Maddock article does not once mention the term homosexuality or even deal with the issue of sexual intimacy between members of the same sex.

Kasun's statistical documentation is equally misinformed and misleading. At one point, she derides the cost of sex education by citing a congressional allocation of "$142 million to be spent on the federal government's teenage sex-education and birth-control program." What Kasun does not report is that very little of these monies were intended for sex education; the bulk of the monies were designed to establish community supports for pregnant teenagers and teenage

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parents. Nor does Kasun even consider the potential cost of not supporting sex education. The Stanford Research Institute has recently determined that over the next 20 years it will cost federal, state, and local governments approximately $8.3 billion in health and welfare services to support the nearly 600,000 teenage births expected to occur in 1979.

Kasun also misleads her readers with her interpretation of the Swedish sex-education experience. According to the Kasun argument, Sweden's "illegitimacy rate . . . which had been declining, subsequently rose" after the introduction of compulsory sex education in Sweden in 1956. The intended implication, of course, is that sex education caused the rise in illegitimacy. A careful look at Sweden's teenage illegitimacy rates reveals a much more ambiguous interpretation.

*Teenage Illegitimacy Rates in Sweden**

YEAR	1930	1940	1950	1960	1965	1969	1973
RATE	12.9%	12.9%	19.5%	17.9%	27.9%	24.5%	25.7%

* Sources: Rates for 1930 to 1969 taken from Shirley Foster Hartley, *Illegitimacy* (University of California Press, 1975); this is the source cited by Kasun. Rate for 1973 taken from *U.N. Demographic Yearbook*, 1974.

First of all, it is obvious from the table above that there was a decline in teenage illegitimacy during the decade (1950-60) in which compulsory sex education was introduced; this decline may or may not have been due to sex education. The following period (1960-65) shows a precipitious rise (55 percent) in illegitimacy, but this rise was not much greater than the rise (51 percent) that occurred two decades earlier (1940-50), before the introduction of sex education. The rise during the 1960-65 period also corresponds to illegitimacy rises in other Western nations (such as Denmark, Great Britain, and the United States), nations that did not have compulsory sex education. Since 1965, there has been a general leveling-off of the Swedish teenage-illegitimacy rate, certainly not a continued rise. These data clearly do not support the assumption that sex education causes illegitimacy. More importantly, these data are largely irrelevant to the argument. The data do not control for the massive welfare changes which occurred in Sweden during this time. These welfare changes alone could account for the fluctuating illegitimacy rates, independent of sex education.

Kasun's article clearly creates a false image of sex education. This is not to say that sex education is without fault or that the Arcata program cannot be criticized. The subject matter of sex education goes to the very core of America's familial and moral value systems. It is a critical subject matter that cannot lightly or carelessly be taught. Thus, it is very deserving of our vigilance and critical attention. But our vigilance and attention must also be honest; it must recognize, if not accept, what sex education has come to mean in American public, private, and parochial schools.

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It should come as no news today that our society is in the throes of what Robert Nisbet has called the "twilight of authority." This condition, this crisis of traditional social and moral authority, is evidenced all around us. It is found in the growing disregard and disrespect for our political and educational institutions, in the loss of patriotism and the hero, in the corruption of language and the decline of reason, and in the repudiation of family, religious, ethnic, and community standards. These are not imagined changes, part of a conservative rhetoric, but very real changes. These are documented changes, recorded in our various social indicators.

Not the least of the changes evidencing the decline in traditional authority is the change in adolescent sexual behavior. Our record of changing adolescent sexual behavior is not to be envied by any nation. The past quarter-century has seen precipitous rises in venereal disease among adolescents, in premarital pregnancy, in abortion, in out-of-wedlock birth, and in pregnancy-induced marriage. Melvin Zelnick and John F. Kantner, of the Department of Population Dynamics at Johns Hopkins University, recently reported from a national survey of teenagers that:

> One in five U.S. females have had intercourse by age 16, and two-thirds, by age 19. Almost all the experience is premarital. One in 10 U.S. women get pregnant before age 17; one-quarter before they are 19, and eight in 10 of these pregnancies are premarital. More than one-third of those who are sexually active premaritally have a premarital pregnancy before they turn 19, one-quarter by the time they are 17.

Our crisis in traditional social and moral authority is not imagined; it is very real.

The changes in adolescent sexual behavior are reflective of what some observers have seen as a more abstracted state of moral impoverishment in our youth, of a lack of sexual morality and lack of sexual restraint. One need not look far for the chief culprits of this impoverishment; they are us—adults—we are the enemy. Adult society has become infected with the doctrine of self-gratification. We have developed, in Christopher Lasch's words, a "culture of narcissism," a culture with no limits to the pursuit of experience and pleasure. This is a culture which, according to Irving Kristol, has turned the game of tennis into "Freudian tennis, Zen tennis, women's lib tennis, tennis for divorcees, marriage-counseling tennis," and so on. Ours is a culture which, guided by Alex Comfort and company, has turned sexual intercourse into a game, a game played with massage oils, waterbeds, mirrors, hottubs, peacock feathers, and extra-marital and multiple partners. To be sure, not all of these pursuits are in and of themselves harmful. Lord knows, few of us today could live under the repressive codes of the Victorian era, and with effective contraception we do not need to. But while our sexual games may not be harmful in practice, they are, indeed, harmful in impression. The impression our behaviors have created in our youth is that we are the morally impoverished, we are the

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ones lacking in sexual morality and sexual restraint. And, however accurate or inaccurate this impression may be, it has more than anything else fed a model of moral impoverishment to our children.

Of course, our modeling influence is not the only cause of changing adolescent sexual behavior; there are a myriad of other influences wrapped up in the changing fabric of our society. The student of structural effects cannot help but notice the contributions made by social-policy innovations, innovations designed to "improve the quality of life." Relaxed abortion laws and increased welfare coverage to unwed mothers—however needful and well-intended—have certainly removed some of the natural coercive constraint from premarital intercourse. Inflation and affirmative-action laws in many cases have helped to get the last parent out of the home, and this has obviously lessened parental influence and surveillance. (Zelnik and Kantner have reported that 74 percent of their teenage respondents' most recent intercourse experiences occurred in one of the partners' homes!) Then, too, our relaxed divorce laws and social supports for single-parent households have further propelled the breakup of familial influence and control. To this list one could add the media exploitation of sex (encouraged by our liberal obscenity and pornography laws), the increased availability of drugs and the declining enforcement of drug laws, the decline in church attendance, the erosion of neighborhood cohesiveness and control, and so on. The rise in adolescent sexual behavior is very much embedded in other changes which, for better or worse, have occurred in our society.

This embeddedness of adolescent sexual behavior within the larger social order makes the behavior nearly impossible to eradicate. And this point is significantly missed by Jacqueline Kasun. It is not enough to wish that our children would return to a period of relative sexual innocence. If we want to turn our children's behavior backwards, then we must turn those contributing aspects of society backwards. And this is something that many people, many interest groups, and many politicians, are not yet willing to do.

What, then, is left for the concerned parent, or concerned educator, or concerned community member, all of whom must pay for the rising rates of adolescent sexual behavior? We could say, "teach your children at home, teach them in church," as Kasun suggests. But is that enough? Obviously, it's not enough, because it hasn't worked. No, there are no easy solutions to the problem of adolescent sexual behavior. It is doubtful that we will ever return to a period of youthful sexual innocence in our society. The best we can hope for is containment, to somehow moderate the influence brought about by other social changes. And this is what sex education means in American schools today: Sex education is an attempt by many parents and many educators and many community members to teach and to reinforce familial and moral values in a society that increasingly undermines these values.

Jacqueline Kasun is terribly naive and mistaken to suppose that

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sex education is the product of some conspiracy by sex educators to "mold minds" and "turn children into sex experts." To be sure, there are sex educators with positively foolish, even dangerous ideas, but there must be an equal number of sociologists and economists with foolish and dangerous ideas, too. Sex educators have not caused the sex-education movement in American schools. There have been notable sex educators, such as Mary Calderone and Lester Kirkendall, who encouraged the movement—but their influence alone has not been sufficient. The sex-education movement did not catch hold in American schools until the late 1960's and early 1970's; then it was largely a community response to adolescent sexual behavior, to increases in venereal disease, premarital pregnancies, abortions, out-of-wedlock births, and pregnancy-induced marriages.

PERHAPS more than any other courses taught in schools today, sex-education courses retain a distinct local influence. Much like the Arcata program, sex-education courses in general tend to be initiated, designed, and implemented at the local community level. Consequently, program content varies with communities, with school districts within communities, and with class, religious, and ethnic differences within school districts. There are very few similarities among sex-education programs. Most programs do teach the biology of human reproduction and most do encourage adherence to traditional familial and moral values—the values of love and commitment in relations, the values of marriage and enduring heterosexual unions, and the value of sexual restraint and the "right to say no." Fewer, though still many, sex-education programs also provide instruction in marriage and child-rearing skills. Almost all sex-education programs are voluntary, contingent upon explicit or implicit parental approval; only two states, Kentucky and Maryland, have made sex education compulsory, and even these encourage local program design.

Most sex-education programs avoid any but the most minimal reference to some of the more controversial issues in human sexuality, issues such as abortion, masturbation, and homosexuality. I have found no record of any program that actually encourages these behaviors. Certainly, there must be individual instructors who do encourage abortion and/or masturbation; but it is doubtful that many local Boards of Trustees would let truly irresponsible instruction continue for long.

More often, if controversial issues are considered at all, they are likely to be treated with what is called a "value neutral" or "values clarification" approach. The purpose of this approach, which is used in the Arcata program, is to present the student with a range of community opinions and evidence on some behavior (e.g., masturbation), but neither to encourage nor to condemn any of the opinions. The value-neutral approach may be or, if not, perhaps it should be the most controversial issue in sex education today. Kasun was obviously disturbed by this approach in the Arcata program,

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though she did not articulate her concerns well. Others have also been disturbed by this approach (compare, for example, Ernest van den Haag, "Why Sex Education?" *National Review*, 1969; and William Bennett and Edwin Delattre, "Moral Education in Schools," *The Public Interest*, Winter 1978), and their concerns are legitimate. The term "value neutral" is a misnomer because there very definitely is a value expressed in this approach—a value of tolerance. And it can legitimately be objected that tolerance for such behaviors as abortion, masturbation, and homosexuality may be interpreted by some students as approval or, even, passive encouragement. There are, of course, many parents who themselves view these behaviors with tolerance, and these parents' philosophies may be served well by the "value neutral" approach. There are other parents, however, who would condemn abortion, masturbation, and homosexuality, and these parents' philosophies are not being served well. The "value neutral" approach does, assuredly, threaten to undermine their teaching in the home. And so that approach is, and should be, a point of controversy in sex-education programs. I personally cannot think of an easy solution, except to make the programs voluntary and subject to parental permission of some kind.

Unfortunately, there is no evidence on the effects of the "value neutral" approach nor, indeed, is there much good evidence on the effects of sex education in general. Proponents' and opponents' rhetoric aside, there has been very little convincing research done on the effects of sex education. The handful of careful studies which have been done indicate that the effect of sex education on adolescent sexual involvement is generally benign; students who have taken sex-education classes in junior high and high school are neither more nor less likely to engage in premarital sexual behavior than students who have not taken such classes. Zelnik and Kantner have suggested of this benignity that "as in other areas of education, the transfer of knowledge in formal settings may be likened to carrying water in a basket." Others, no less informed, have suggested that this apparent ineffectiveness actually hides—and is the resultant compromise of—the high variability of content and instructional quality in sex-education programs. But no one knows for sure. Nor does anyone know the answer to the equally relevant question of whether sex education affects the "responsibility" of sexual involvements. That is, given no difference in the likelihood of involvement, will students who have taken sex-education classes be more or less responsible (discriminating?) and better or worse contraceptively prepared in their involvement?

It seems somehow ridiculous, though not uncharacteristic, that the federal and state governments have not done more to answer these questions. After all, these governments spend billions of dollars bandaging the consequences of irresponsible adolescent sexual behavior, and the federal and most state governments do nominally support sex education. One would think that they would want to know whether sex education is or can be made effective. But, as

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yet, they have not provided us with helpful answers, and so we are left not knowing.

THIS, then, is the present state of sex education in American schools. The sex-education movement came in response to the erosion of traditional social and moral authority and to the precipitous rise in adolescent sexual activity and its consequences. The sex-education movement represents, in many respects, a "revival of localism," born out of the efforts of local parents and local educators and local community members to recover control over the moral teaching of their children. Reflective of its diverse origins, the content of sex-education programs is highly varied. This content varies largely with the familial and moral value systems of the communities and school districts served. Even so, not all parents and not all community members are served by local sex-education programs, and those people who disagree with the concept or content of sex education have a right to be concerned.

Others of us have a right to be concerned as well. No one knows whether sex education is helpful or harmful or simply benign. Without this knowledge, without some concrete assurance that sex education does not promote the further erosion of traditional social and moral authority, we have a right to be vigilant, and we have a right to be critical. But let us be informed and responsible in our criticism. Let us recognize what sex education is and what it is not. Let us at least respect the efforts and concerns of those people who think that sex education will help their children. We can ill afford to tamper carelessly with their spirit.

Whether we like it or not, sex education will go on outside the home and outside the church. If it does not go on purposefully in the schools, it will go on haphazardly in the peer group, in the neighborhood, and in the media. In the past, these haphazard influences served many of us well; but do they serve our children well today? The choice of who will educate our children is ours; let us handle it with care.

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More on the New Sex Education

JACQUELINE KASUN

THE major thrust of Professor Crosbie's article is that sex education is a moral, spontaneous, appropriate, local response to contemporary problems of major significance, such as "rising adolescent sexual behavior . . . increases in venereal disease, premarital pregnancies, abortions, out-of-wedlock births, and pregnancy-induced

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marriage." He attributes these problems in turn to a deeply troubling malaise which afflicts the society at large.

Were this view of the question accurate and complete, Professor Crosbie and I would have no quarrel. There are, however, some troubling realities and questions not included in Professor Crosbie's perspective. His portrayal of our problems of youthful sexuality is seriously lacking in accuracy, and there are serious questions, of which he seems to be entirely unaware, about the real effects, as well as intent, of sex education.

The "problem of adolescent pregnancy" will illustrate my point. The Commission on Population Growth and the American Future first brought this so-called problem to the national attention in the early 1970's. Other organizations also concerned with the "population explosion" soon echoed the alarm, culminating with the publication in 1976 of Planned Parenthood's *11 Million Teenagers: What Can Be Done About the Epidemic of Adolescent Pregnancies in the United States.* The publicly-subsidized distribution of thousands of copies of this brochure to legislators, educators, and opinion-makers established adolescent pregnancy as a national problem of the most serious proportions, calling for action by national, state, and local governments, as well as private agencies.

In fact, however, during this period of publicly-funded media buildup, the birth rate among women under 20 was falling precipitately. The rate for 15-to-19-year-olds fell 44 percent between 1957 and 1976, bringing it to the lowest levels ever recorded. Not only birth rates but *numbers* of births to women under 20 have been declining since 1970. Most so-called "teenage" births are to young married women starting their families in the usual way. Less than four out of a hundred girls aged 15 to 17 and about one out of a thousand under age 15 give birth in a typical year, and these rates have remained at approximately the same low levels for the past two decades.

Even when allowance is made for abortions, the adolescent pregnancy rate shows no evidence of increase since 1955, and may actually have decreased, as shown in my testimony submitted to the House Select Committee on Population in the spring of 1978, as well as by other statistical investigators.

Moreover, the public costs of out-of-wedlock births to teenage mothers are surprisingly small. The great majority of teenage mothers do not become welfare clients. The entire program of Aid to Families with Dependent Children absorbs only 2 cents out of every tax dollar, perhaps rising to 4 cents when allowance is made for food stamps, medical care, and other assistance; and teenage mothers absorb only a part of these outlays.

The Stanford Research Institute figure for teenage-childbirth costs, quoted by Professor Crosbie, comes from a study conducted by John C. Robbins who assumed, without basis in fact, that not only do teenage mothers and their babies receive public assistance, but so do the mothers' husbands in large numbers and over long

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periods of time. He also assumed that women continue to receive large public-assistance payments for 20 years after a teenage birth when in fact such long periods of dependency are extremely rare; and he included large allowances for extraordinary medical costs supposedly caused by births to young mothers. The combined result of these exaggerations is gross overstatement of the public costs of teenage childbirth.

Mr. Robbins also takes credit for creating Planned Parenthood's highly colored *11 Million Teenagers: What Can Be Done About the Epidemic of Adolescent Pregnancies*, which has done so much to alarm the American public, including Professor Crosbie. (My critique of this pamphlet has appeared in several publications, including *USA Today* of July 1978.)

Thus, by means of aggressive promotion and the inspired application of creative statistics, the Great Teenage Pregnancy Panic captured the imagination of the media and Congressional committees in much the same way as the Population Bomb. The Bomb also carries on despite the fact that the nation is on the brink of population decline, with 7 million fewer children in school in the fall of 1979 than in 1970, and with the rest of the world also showing significant fertility reductions. Though world food supplies are at their highest levels in history and most of the world's land surface remains in wilderness, the Population Bomb, we are told, keeps exploding.

The reasons why such notions persist despite factual evidence to the contrary are both ideological and economic. The federal government began its subsidies to "family planning" in 1968, in response to heavy pressure from groups concerned about the "population explosion." The program expanded 19 times over by 1977, by which time it was financing Planned Parenthood clinics throughout the country, free abortions and sterilizations for the poor, a multi-million dollar program of research grants, and a variety of sex-education programs operated by at least six different agencies within the Department of Health, Education, and Welfare, according to the House Select Committee on Population. Indeed, much of the "family planning" effort, which now absorbs about $500 million annually, including American subsidies to foreign population-control programs, is a sex-education effort. The major services provided by the agencies are information and "counselling" about contraception, sterilization, and abortion, offered with the object of reducing the rate of population growth. (The principal private recipient of these public subsidies, Planned Parenthood, expressly supports a goal of zero national-population growth.)

The attempt to insert these activities into the public schools, from kindergarten through high school, is what many communities are now experiencing as the sex-education controversy. It should more properly be called the "*new* sex education" controversy, since most schools have had instruction in the biology of reproduction for a considerable time. The new subject matter is, as described in my

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original article, mainly concerned with the development of "self-awareness," "acceptance of one's own sexuality," support of strict limitations on childbearing in response to what is perceived as a severe "problem of overpopulation," and the development of a willingness to provide large amounts of personal information to the sex authorities.

The supporters of the effort, of course, multiply in proportion to the funds expended. As is the way with public programs, needs expand to absorb the grants available, and more. Programs must be evaluated, new needs are discovered, the constituencies of grants programs increase and acquire political leverage. And if the Population Bomb and the Teenage Pregnancy Epidemic should ever fail to open the grants sluice, child abuse and incest can be cranked up to prove the breakdown of the family and the need for public control.

If Professor Crosbie's diagnosis of our problems is less than complete or accurate, his prescription is even more questionable. While he admits that there is no proof that sex education does any good, he nevertheless strongly suggests that it is probably "benign," without even mentioning the serious objections to it raised by qualified child-development authorities. And he does not follow his own admonition to "be informed" about the subject; his description of the objectives and aims of the real programs is extremely faulty.

A program that encourages the elementary-school teacher and the school nurse to perform the functions of a child psychiatrist is innately risky. For example, the naming of body parts including the genital organs, and the mixed-group bathroom tour in kindergarten and first grade (which is required in the standard new sex-education program, including that for Arcata) are defended in the jargon of the new sex educators as necessary steps in a "desensitization" process which aims at overcoming children's reticence and developing a "healthy acceptance of one's own sexuality." But should all such reticence be overcome? Do not both adults and children have rights to personal privacy which should be respected? Above all, do such practices intrude into a child's development at a time which many psychiatrists call a "period of latency"—the period between babyhood and adolescence—when the child is properly absorbed in a wide variety of non-sexual learning tasks, and when to distract him into sexual preoccupations is to do him harm? Wise parents and teachers have usually provided sexual information in response to the individual child's own questions, thus allowing the child to keep control of his own development process, rather than forcing him at a pace to suit the requirements of an ideological program.

In what Professor Crosbie calls "light instruction in the biology of reproduction" in grades four to six, the Arcata curriculum guide, following the new standard, calls for the fourth-grade child (age 9 to 10) to "continu[e] to develop an emotional acceptance of sex" and for the fifth-grade child (age 10 to 11) to "develop constructive

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ways of expressing his own sexuality" and to know the "anatomy and physiology" of both male and female reproductive systems. The source book cited in the guide, the widely used *Education for Sexuality* by John J. Burt and Linda Brower Meeks (Saunders, 1975), specifies (pp. 286-315) that fifth-grade children will make a notebook in which they define "testes," "scrotum," "seminal vesicle," "prostate," "fertilization," "vagina," "wet dream," "hymen," and other terms; it requires them to label detailed drawings of the reproductive systems of both sexes and to study intercourse (described explicitly), pregnancy, and childbirth.

Children have always investigated and experimented with their own bodies and with sex to some extent. There is no evidence that this basic fact has changed. Nor does this unchanged fact somehow "prove" that all children require explicit, early, intensive sex education at the hands of adults. There is no evidence that what Professor Crosbie calls the "haphazard" learning of children from each other is harmful, but there is much reason to fear the effects of a determined, sophisticated, and forceful adult intrusion into the world of childhood.

Contrary to Professor Crosbie's assertions, there is no reliable statistical evidence of increased sexual activity among children or adolescents. The studies purporting to prove these things are based on questionable data and may chiefly prove an increased willingness to divulge personal information. Nor is there reliable statistical evidence of an earlier "average age of menarche" or an earlier "average age of seminal emissions," which are also frequently cited as evidence of need for more, and more intensive, sex education. While all of these impressions may be true (or false), the information required to establish them with a high degree of probability is not—yet, thank heaven—collected by reliable statistical agencies; if the momentum of the sex-education/population-control movement continues to gather steam, however, all such information will be regularly collected and stored in the official data banks—as is already being done in some countries where population control is taken seriously.

Commenting on the new sex education, psychologist Dr. Rhoda L. Lorand has said:

> Twenty-five years ago, I and many other child analysts might have enthusiastically endorsed school sex education . . . because we believed at that time that emphasis on sexual knowledge could do no harm, only good. We have since learned that it is harmful to force sexual preoccupation on children of the elementary school grades. . . . Forcing of sexual preoccupation on the elementary school child is very likely to result in sexual difficulties in adulthood, and it can lead to disturbed behavior in childhood.

Dr. Myre Sim, Professor of Psychiatry at the University of Ottawa, called the new sex education "anti-educational." Dr. John Meeks, Director of Child and Adolescent Services at the Psychiatric In-

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stitute of Washington, said it is "unwarranted and potentially destructive."

Though the word "moral"—"moral value," "moral adjustment," "familial and moral values," and so forth—appears repeatedly in Professor Crosbie's own description of the Arcata curriculum guide, it is of at least passing interest that the word "moral" does not appear even once in the actual curriculum guide. While Professor Crosbie at first insists that the new sex education has moral objectives, he then asserts that it is nevertheless "value-neutral," and arrives at last at the position that it is not really value-neutral but that it strives to encourage "tolerance." He is right, of course, that the new programs are not value-neutral. They use the most sophisticated methods of mental conditioning (I described some of these in my original article) to instil the desired new value of tolerance toward every form of sexual expression that does not result in babies.

The Arcata guide follows the model for such programs by requiring the student to "develop a knowledge, awareness, and understanding of the need for mature and responsible decisions regarding population stabilization. . . ." The guide warns that the consequences of "overpopulation" are "famine" and "death." It calls for children to learn that these evils can be avoided by contraception, abortion, and sterilization, and it states that the children will be tested on this material to make sure that they have "learned" the right things.

Supporters of the new sex education are fond of claiming that it is necessary to dispel the ignorance which results in teenage pregnancy. However, it does not require indoctrination beginning in kindergarten to learn how to prevent pregnancy. More than 98 percent of the young women receiving pregnancy counselling in my county in 1977 stated that they were familiar with methods of contraception. Since the new sex education also informs them of the "back-up" availability of abortion at public expense without their parents' consent or knowledge, it probably encourages pregnancy risk-taking.

THERE are some truly astonishing discrepancies between a number of Professor Crosbie's statements and the real state of affairs. For example, he says, "Neither [masturbation nor homosexuality] is mentioned at all in the seventh-grade curriculum. Eighth-grade students are presented with approximately a 15-minute discussion of masturbation." In fact, the curriculum guide for Arcata provides a single program for both seventh and eighth grades and includes the following section, which I have reproduced exactly as it appears in the original:

IX. Masturbation*
- A. The student will develop an understanding of masturbation and become aware of the attitudes related to it.
  1. learn the vocabulary and statistics of masturbation.
  2. view films—As Boys Grow or Achieving Sexual Maturity.

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3. learn the four philosophies of masturbation—traditional, religious, neutral, radical by participating in a class debate.

* pre and post test in each subject area

Again, according to Professor Crosbie, Arcata students "are not . . . shown 'films' . . . and they do not 'engage in role playing about homosexuality and take tests on it.'" However, the Arcata curriculum provides different evidence. The misspellings and punctuation appear in the original:

X. Homosexuality*

A. The student will develop and understanding of Homosexuality and become aware of the attitudes related to it.

1. Learn the vocabulary and social fads relating to Homosexuality.
2. study the theories concerning it i.e. social, religious, developmantal and legal by participating in a class discussion.
3. discuss the meanings of masculinity and feminity.
4. view film and role playing of the dilemma of a Homosexual.

* pre and post test in each subject area

According to Professor Crosbie, my citation of James Maddock was "less than accurate." In fact, in his article which appeared in the journal *Adolescence* in the fall of 1973, James Maddock states, exactly as I quoted him in my original article, ". . . we must finish the contemporary sex revolution . . . our society must strive to sanction and support various forms of intimacy between members of the same sex." Regardless of whether Professor Crosbie and I agree on the precise meaning of Maddock's statement, there is no doubt that the new sex-education movement accepts homosexuality, masturbation, bisexuality, group sex, and other practices as merely varying aspects of the wide spectrum of "human differences." This fact is abundantly demonstrated in the sympathetic and authoritative recent work *The New Sex Education*, edited by Herbert A. Otto (Follett, 1978), a work which should be studied by everyone who wants to understand the movement.

In his discussion of Swedish illegitimacy, Professor Crosbie not only distorts my article but also omits a major point made by Shirley Foster Hartley in her work *Illegitimacy* (University of California Press, 1975). This important point was that, after the introduction of compulsory sex education in Sweden, illegitimacy (the number of illegitimate births per thousand females of childbearing age), which had been declining, subsequently rose for every age group *except* the older group which did not receive the special education. Also, Professor Crosbie seems to have made some errors in his table. Although he attributes his 1973 figure for "teenage illegitimacy" (which he does not define) to the *U.N. Demographic Yearbook* of 1974, the *Yearbooks* give no such figure for Swedish *teenagers* nor any data from which such a figure could be computed. The *Yearbooks* do show, however, that *total* illegitimate births have steadily increased in Sweden since 1966, both in number and as a percent of all births, as shown in the table on the next page.

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*Illegitimate Births in Sweden, 1966 to 1974**

Years	Number of Illegitimate Births	Illegitimate As Percent of All Births
1966	17,962	14.6%
1968	17,891	15.8
1970	20,255	18.4
1972	28,142	25.1
1974	34,451	31.4

* Source: *U.N. Demographic Yearbook 1975*, p. 762.

Professor Crosbie insists that the Arcata curriculum was spontaneously developed by local parents and teachers, and that this is the origin of most such programs. In fact, however, the Arcata program was for the most part simply copied from the standard source work, by Burt and Meeks, which has inspired so many new sex-education programs throughout the country. The "goals and objectives" of the Arcata program are word-for-word the same as those of Ferndale and its content closely resembles that of other programs for this state and other states which I examined before writing my article.

There is indeed, as Professor Crosbie avers, "special training" for teachers. Such training is aggressively promoted. One teacher of my acquaintance, who had recently completed a sex class, declined a Planned Parenthood invitation to attend still another. He soon received, at his school during class, a long-distance telephone call from Planned Parenthood at the State Capitol in Sacramento asking his reasons for refusal. As Patricia Schiller describes in *The New Sex Education,* the training programs "shake up the layers of unconscious conditioning that inhibit one from . . . accepting new ways in sexuality" and help teachers develop "self-awareness" through "exploration" of their feelings about masturbation, homosexuality, nudity, premarital sex, and other topics.

An attempt to require written parental permission for children to receive federally funded sex education failed in Congress in the spring of 1979. As stated in my original article, California law only requires that "Opportunity shall be provided to each parent or guardian to request in writing that his child not attend the [sex education] class" (Education Code Article 6, Sec. 51550). Unless the school receives such a written request, it may legally give the child sex instruction. According to the Arcata superintendent of elementary schools, written permission is required only for the seventh- and eighth-grade instruction and not, as stated by Professor Crosbie, for the lower grades. Parents in other California cities have complained that their children have received explicit sex instruction without the parents' knowledge that it was to be offered.

As Professor Crosbie's article indicates, the new sex education arouses great emotion, as well as many questions. Those who want it demand that it be provided to everyone's children. Leaders of the movement, such as Dr. Mary Calderone, past medical director

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of Planned Parenthood, see it as nothing less than the opportunity to completely remake the human material. When every little boy and girl has been throughly initiated into the full and free joys of sex, the New Human Being will emerge, in the rhapsodic phrases of Dr. Calderone, "[e]ager, passionate, caring, unafraid, open, responsible, exultant." And, of course, only very rarely a parent.

Whether this exultant re-creation of a generation of children should be undertaken by the fourth-grade teacher and the school nurse is the question we face.

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Irving Kristol, Editor

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CURRENT READING

Private Philanthropy vs. Public Bureaucracy

Meals on Wheels has provided the homebound elderly with nutrition and companionship for a quarter century. Manned by volunteers and privately funded until now, it has proven an exemplary success among social programs. Now, however, there is trouble. Michael Balzano tells the story in *Regulation* magazine (September/October 1979):

> By any standard, these thousands of neighborhood programs constitute the very model of what has always been valued most in this country: tens of thousands of volunteers identifying a genuine community need, amassing private resources, and meeting that need—with a minimum of bureaucratic fuss and a maximum of effective service. Every day for 25 years now, and often twice a day, these local, private, nonprofit programs deliver hot meals (and often essential ties with the outside world) to the homebound. Most of them are old—but they need not be sixty years of age or older. Many pay some or all of the cost of the meals; others pay none. Local churches and charities make up the deficit. The programs are tailored to virtually individual situations—and apparently they work.
>
> In 1972, responding to no less worthy a need but quite a different one, Congress amended Title VII of the Older Americans Act to authorize a so-called congregate nutrition program. These programs serve a hot meal to senior citizens (sixty and over) five days a week in a social—congregate—setting. There is no means test or charge for the meals; voluntary contributions are accepted. Last year these congregate centers served some 500,000 meals a day at an annual cost to the taxpayers of more than $300 million. The federal grants go to state agencies which put up 10 percent of the total costs; they in turn channel the funds through area agencies on aging which create federal programs in the form of nonprofit entities to run the centers.
>
> So, for about six years now, there have been two nationwide networks providing meals to the elderly, each with a legitimate, different, and apparently complementary purpose: voluntary meals-on-wheels pro-

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grams serving the homebound and federal Title VII programs serving the physically mobile. The one was a citizens' effort, locally designed, flexible, and privately supported; the other, necessarily encumbered by federal regulation ranging from the nutritional content of the meals to equal opportunity requirements for the hired staff. The one represented no appreciable drain on the U.S. Treasury, the other a considerable one.

In 1978, Congress began debating the creation of a national, federally funded, home-delivered meals program. It was principally concerned with the nutrition needs of the homebound elderly and saw in meals-on-wheels a logical vehicle for getting the job done. . . .

As passed by Congress on October 18, 1978, the meals-on-wheels bill was incorporated into amendments to the Older Americans Act that greatly expanded social services for the elderly. [There were] solid grounds for believing that it was the intent of Congress to expand meal service to the homebound by using local voluntary meals-on-wheels programs as the main vehicle. Many members of the Senate and House authorizing committees said it was, including the chairmen, Senator Thomas Eagleton and Representative John Brademas: "In awarding funds, first consideration must be given to organizations like Meals on Wheels . . ." (Letter, *Washington Star*, July 21, 1978).

Moreover, Congress provided two separate authorizations, one for the existing congregate programs and another for home-delivered meals. This was taken as a signal of congressional intent that meals-on-wheels programs would be eligible for direct grants from the area agencies and not subsumed under the authority of Title VII projects. Finally, [meals-on-wheels] was not only cited in the act as one of the organizations with which the Commissioner on Aging had to consult in setting the qualifications for grants' applicants but also was assured by him that the regulations would specifically protect the local voluntary programs from being forced out of business by Title VII competition.

On July 31, 1979, the draft regulations finally appeared in *The Federal Register*. The key provision states: "The area agency may only award funds for home delivered meals to a service provider that also provides congregate meals [section 1321.147(c)(1)]." This flatly rules out all but a handful of the voluntary meals-on-wheels programs from eligibility for direct federal grants—since, by definition, it is not their purpose to serve congregate meals. It also eliminates the possibility of funding any home-delivered meals services in areas where no congregate meal center exists. . . .

All of which constitutes a sorry reward for local voluntary initiative. Congress apparently did not carefully assess the impact of the language authorizing the new federal program on the existing voluntary effort. And this failure has doubtless been compounded by an outbreak of extreme bureaucratic literalness in construing the statute and writing the regulations. Unless a way can be found to fund the voluntary effort directly, the law and the regulations are likely to have the unintended consequence of destroying the thousands of community-based programs that have been serving the homebound for so long at just about zero cost to the taxpayer.

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Hungary, Part I: The New Economic Order?

Hungarian Communists never did succeed in stamping out the crass capitalistic profit motive, and now they don't want to, according to *The Economist* (September 29, 1979):

> They say that the richest man in Pecs, the beautiful old county town in southern Hungary, is a cripple who owns a pet shop. Nowadays Hungary's Communist rulers are not trying to exterminate the *maszek* (private trader or artisan). Indeed, such people are being urged to fill the gaps in the "socialist" sector.
>
> There were 10,893 private traders last year—200 more than in 1977—who had the help of 5,460 family members and about 1,500 registered assistants. Too few, the government reckons, for a population of more than 10 million. So shopkeepers are now being offered tax concessions and rebates to encourage them to open up, especially in the provinces. Hungary's 91,000 private artisans supplied 46 percent of all services available to the population last year. But experts reckon that at least 35,000 more are needed.
>
> That is what lies behind the calls for more "evening artisans"—plumbers, mechanics, watchmakers, and others who hold a job with a state or co-operative firm and "moonlight" in their spare time. At the moment these moonlighters are handicapped by lack of modern equipment, either because they cannot afford it or because the state shops cannot supply it; and their rates of pay take into account only labour, not work performed by a machine. So they lack incentives to bring themselves up to date technically. The government is looking into this, and meanwhile it is offering tax concessions and rebates similar to those offered to shopkeepers, if they are willing to work outside Budapest.
>
> Offices have been set up where requests for the services of private artisans, both full-timers and moonlighters, are collected and forwarded to them. At the eight such offices in Budapest, artisans can also order materials and get help with their paperwork. A telephone service is in operation in Budapest and three counties through which customers can ask for a plumber or electrician or a television repairman. In Budapest a number of centers have been set up where artisans can ply their trades and carry out repairs in individual workshops. More such centers are planned exclusively for the moonlighters.
>
> It is in agriculture, however, that the private sector is making its biggest contribution. Last year it yielded $1.7 billion worth of produce, a third of Hungary's total agricultural output. Only 15 percent of all farmland is privately cultivated by co-operative farmers and other citizens who have private plots, or by the few remaining small farmers who did not join the co-operative farms when agriculture was collectivised in 1962. Yet the private sector accounts for 96 percent of all rabbits, 50 percent of all pigs, a third of all cows, and lots of fruit and vegetables.
>
> *Maszek* teams are doing a lot of private house-building work, especially in the countryside. There is a severe housing shortage, and these private teams command high wages, sometimes 10 times higher than those that the state and co-operative building firms pay.

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Hungary, Part II: The Withering State?

Economic backsliding is the least of the ideological headaches facing the Hungarian Communist faithful. For the flower of their youth and future leaders of the Party have slid so far that they don't know who runs their country, they don't know elementary Communist history, and they don't even care, reports *The Washington Post* (September 24, 1979):

> Eighty out of 100 Communist youth leaders in Hungary have no idea who is meant to be running their country.
>
> That's the conclusion of a recently published public opinion poll that reveals the depth of political ignorance and apathy among young people throughout East Europe. The former Soviet leader Nikita Khrushchev was described variously by those polled as "a U.S. president in the early 1960's," "the first man in space," and "the manager of a collective farm."
>
> Perhaps the most startling fact about the poll is that it was conducted among those young Hungarians who are expected to know most about politics: officials of the Communist Youth League. They undergo extensive political training, and part of their job is to teach other young people Communist Party history and ideology.
>
> Although the poll was confined to Hungary, there can be little doubt that it reflects a general mood among young people throughout the region. The explanation for it seems to lie in a mixture of cynicism about the value of political activity in an authoritarian state and reaction against the government's incessant attempts at ideological indoctrination.
>
> The Hungarian pollsters discovered that, of the more than 800 youth leaders they questioned, 82 percent knew nothing or very little about the country's most broadly-based political organization, the People's Patriotic Front. The Youth League itself comes under the Front's umbrella.
>
> Only 8 percent knew the name of the Front's president and 3 percent its secretary-general.
>
> The youth leaders' knowledge of Communist history turned out to be little better. Seventeen percent of those polled knew nothing about Lenin, 31 percent had no idea who Stalin was, and 42 percent professed ignorance about Khrushchev.
>
> While most of the youth leaders had at least heard of Lenin—a ubiquitous name in East Europe, if only because of the number of streets named after him—the depth of their knowledge ended with the description of him as "a revolutionary" or "a Marxist." One youth put him in the wrong historical era by describing him as "a close friend of Marx and Engels," an understandable error [when one considers that] the three men often are featured together as a kind of Communist holy trinity on billboards.
>
> Meanwhile, Stalin was ingenuously described by one youth leader as "the former governor of Hungary during the Stalinist era." Another appeared to confuse him with Hitler by claiming he was "commander-in-chief of the Germans and was finally shot in the head."

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Could It All Be Fantasy?

A recent issue of *The Chronicle of Higher Education* (September 17, 1979) analyzes disorders in the psychology profession:

> One in four women who received doctorates in psychology in the last six years say they "engaged in sexual activity with their professors" when they were graduate students, according to a recent survey.
>
> Such activity is more common among recent Ph.D.'s, according to the three psychologists who conducted the study. "The more recent the Ph.D. degree, the more likely a report of experiencing sexual contact with an educator while earning that degree," the researchers said in a report to the annual meeting of the American Psychological Association here.
>
> Sexual contact is also more common between male professors and female students than between female professors and male students, according to the study. Overall, 17 percent of the women in the survey said they had had sexual contact with their professors, compared to only 3 percent of the men.
>
> As therapists or teachers, 30 percent of the men had had sexual contacts with their own students or clients, the survey found, compared to 9 percent of the women. . . .
>
> In a broader category of "seductive behavior," 14 percent of the men who responded to the survey and 60 percent of the women reported that they had received such attention from a psychology professor, administrator, or supervisor of their clinical internship program, the researchers said. Such behavior typically took the form of flirting, joking about sex, excessive attention, and touching, they said.
>
> Nearly 500 persons participated in the survey, which was conducted by Hanna Levenson, a psychologist in private practice in San Francisco; Kenneth S. Pope, director of psychological services at Gateways Hospital and Mental Health Center in Los Angeles, and Leslie R. Schover, a psychologist from the University of California at Los Angeles. . . .
>
> The profession of psychology "has so far left unaddressed most of the major issues, particularly ethical issues, raised by sexual activity between students and their educators," they said.

Homeowners without a cause?

As the proportion of elderly Americans continues to increase, public concern about their condition intensifies. Television news reports, magazine features, newspaper investigations, and government studies focus on the difficulties experienced by the elderly. The inference is easily drawn that to be old in America is to be neglected, in poor health, poorly housed, and generally dispirited.

But is that equation of age and misery correct? According to Alvin Rabushka and Bruce Jacobs, the authors of *Old Folks at Home* (The Free Press, $10.95), it is necessary to consider how the elderly perceive their own situation in answering that question. Rabushka and Jacobs undertook to interview a nationwide sample

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of elderly homeowners, 60 years and over, about their health, incomes, living conditions, and the like. Why homeowners? Because, as the authors point out, 70 percent of the elderly own their own homes—and 87 percent of these own their homes "free and clear"!

The survey turned up some interesting facts which, the authors contend, have been ignored or not taken fully into account in assessing the lot of the nation's senior citizens. For instance, of the national survey sample, only 11 percent fall below the government's official poverty line, though in the sample from the rural South the percentage was significantly higher. In addition, almost every homeowner surveyed sees his home as adequate in each of its parts (plumbing, heating, electrical, and structural systems, etc.). What is perhaps most significant, only 3 percent reported lack of money as a reason to forego repairs.

Rabushka and Jacobs explain the disparity between common portrayals of the elderly and the results of their survey of elderly homeowners by what they call a "needs/preferences mismatch." This represents the difference between what professional social workers believe the elderly need and what the elderly themselves actually desire. In their survey of housing conditions, for example, the authors found the difference great: Application of a professional standard means finding "... anywhere from two to ten times as many housing problems as that acknowledged by the elderly themselves." As the definition of "decent housing" is upgraded to reflect improving conditions generally, experts and social planners "... impute to all people, especially the poor, the elderly, and minorities, a minimum level of consumption of certain goods and services" which fits the new definition. Rabushka and Jacobs maintain that one reason for the "needs/preferences mismatch" is that housing experts often designate as inadequate entire household systems because one part of the system is lacking or defective (as when, for instance, a house's plumbing system is deemed substandard because there is no wash basin in the bathroom, though the owner is quite accustomed to using the kitchen sink). While the survey sample from the rural South (less than one-third of the national sample) clearly shows a need for an upgrading of housing conditions, the authors hold that the overall national sample of elderly homeowners professes satisfaction with its situation.

Having listed the numerous government programs geared to helping the aged, the authors contend that "[t]he aged have surely come of age..." but "... a drumbeating emphasis on bad news about America's aging may create the image of a second-class citizen at the very time that most elderly are able to deal successfully with most aspects of their lives."

The authors admit to the limitations of their research; they did not survey those elderly persons—30 percent of the total—who are renters, or who live with their children, or who are in institutions because they cannot take care of themselves. They also maintain that although the condition of the nation's elderly is not as bad as widespread media portrayals of a senior-citizen minority makes

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it appear, the majority do often need some kinds of help. The authors claim that a realistic evaluation of this situation leads to some modest proposals: reverse annuities, deferral of property taxes, voluntary home inspections, emphasizing security in the provision of community services, eliminating mandatory retirement, replacing tax exemptions with a credit, etc. Most importantly, however, Rabushka and Jacobs emphasize that policy makers must take greater account of the preferences of the elderly, and of how the elderly perceive their own situation. The more independence that they can maintain into old age the better. Senior citizens want to be treated like any other group in society. Those in the minority who need help should get it; the rest should be seen as what they are: self-respecting "homeowners without a cause."

—*Art Kaufman*

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